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SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

RIN 3245–AF53

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) published a final rule in the **Federal Register** on February 11, 2011, to amend the 8(a) Business Development (BD) program and SBA size regulations, and the regulations affecting Small Disadvantaged Businesses (SDBs). That rule was published with a few inadvertent errors that are corrected in this document.

DATES: *Effective Date:* This rule is effective May 14, 2012.

FOR FURTHER INFORMATION CONTACT: LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205–5852, or *LeAnn.Delaney@sba.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

In amending § 124.3, definition for ''Primary industry classification'' SBA intended the time period to consist of three years not the two years provided for in the definition. This change from two years to three years was made in other portions of the rule but was inadvertently not changed in 124.3. Correction of this oversight would make the section consistent with related provisions of the rule.

As stated in the preamble of the final rule, SBA intended to make the provisions pertaining to Tribes, ANCs, NHOs, and CDCs consistent. The section addresses when a subsidiary is eligible for award of a follow on contract. The change was inadvertently only made to the Tribes and ANC provisions. Therefore, SBA is correcting § 124.110(e) and § 124.111(d) to make these provisions, relating to Native Hawaiian Owned (NHO) entities and Certified Development Companies (CDCs) respectively, consistent with the same language pertaining to tribally and Alaskan Native Corporation (ANC) and NHO owned entities. Additionally, SBA is changing § 124.111(d) which contains a reference to SIC instead of NAICS.

In §§ 124.112(b)(6) and (d)(1) SBA is correcting typographical errors that result in the wrong word choice. The word ''contacts'' is replaced with the word ''contracts'' in (b)(6) and the word ''though'' is replaced with the word ''through'' in (d)(1)

In § 124.513(c)(4) SBA omitted the word ''populated'', which is necessary for the public to be able to distinguish the treatment of profit distribution between populated and unpopulated joint ventures. This section will be corrected to insert the missing word.

With regard to § 124.519, SBA provided incorrect instructions to the **Federal Register** for the amendments to paragraph (a) that was inconsistent with the intended amendment as discussed in the preamble for the final rule. Specifically, SBA intended to amend only the introductory text of § 124.519(a) but provided instructions that amended the entire paragraph (a) resulting in the unintended removal of paragraphs (1) through (3). SBA is making the correction here to reinsert those paragraphs.

Finally, to avoid confusion for the public, SBA is correcting awkward language in § 124.520(c)(3) to clearly articulate the standards, as discussed in the preamble, for permitting a protégé firm to have more than one mentor.

List of Subjects in 13 CFR Part 124

Administrative practice and procedures, Government procurement, Hawaiian natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Tribally-owned concerns, Technical assistance.

Accordingly, 13 CFR part 124 is corrected by making the following correcting amendments:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, sec. 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 2. In § 124.3 amend the definition for ''primary industry classification'' by removing the word ''two-year'' and adding in its place the word ''three-year'' in the 4th sentence.

■ 3. Amend § 124.110(e) by revising the third sentence to read as follows:

§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

* * * * *

(e) * * * In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another Participant (or former Participant) owned by the same Native Hawaiian Organization. * * *

* * * * *

■ 4. Amend § 124.111(d) to read as follows:

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

* * * * *

(d) * * * In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another Participant (or former Participant) owned by the same CDC. * * *

* * * * *

■ 5. Amend § 124.112 as follows:

■ a. Amend paragraph (b)(6) by removing the word ''contacts'' and adding the word ''contracts'' in its place.

■ b. Amend the second sentence in paragraph (d)(1) by removing the word ''though'' and adding the word ''through'' in its place.

■ 6. Amend § 124.513(c)(4) by adding the word ''populated'' before the word ''separate.''

■ 7. Amend § 124.519 by adding paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?

(a) * * *

(1) For a firm having a receipts-based primary NAICS code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is five times the size standard corresponding to its primary NAICS code which is determined as of the date of SBA's acceptance of the requirement for the 8(a) BD program or $100,000,000, whichever is less.

(2) For a firm having an employee-based primary NAICS code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is $100,000,000.

(3) SBA will not consider 8(a) contracts awarded under $100,000 in determining whether a Participant has reached the limit identified in paragraphs (a)(1) and (a)(2) of this section.

* * * * *

■ 8. Amend § 124.520 by revising paragraph (c)(3) to read as follows:

§ 124.520 What are the rules governing SBA's Mentor/Protégé program?

* * * * *

(c) * * *

(3) A protégé firm may generally have only one mentor at a time. The AA/BD may approve a second mentor for a particular protégé firm where the second relationship will not compete or otherwise conflict with the business development assistance set forth in the first mentor/protégé relationship and either:

(i) The second relationship pertains to a, secondary NAICS code; or

(ii) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.

* * * * *

Dated: May 4, 2012.

A. John Shoraka,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. 2012–11508 Filed 5–11–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0998; Directorate Identifier 2011–NM–046–AD; Amendment 39–17042; AD 2012–09–07]

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 A319–111, –112, and –132 airplanes; Model A320–111, –211, –212, –214 and –232 airplanes; and Model A321–111, –211, –212, and –231 airplanes. This AD was prompted by reports that corrosion was found on the overwing refueling aperture on the top wing skin, and that for certain airplanes, repairs made using primer coating may prevent proper electrical bonding provision between the overwing refueling cap adaptor and the wing skin. This AD requires performing an electrical bonding test between the gravity fill re-fuel adaptor and the top skin panels on the left-hand and right-hand wings, and if necessary performing a general visual inspection for corrosion of the component interface and adjacent area, and repairing the gravity fuel adaptor if any corrosion is found. We are issuing this AD to detect and correct corrosion and improper bonding, which in combination with a lightning strike in this area, could create a source of ignition in a fuel tank, resulting in a fire or explosion, and consequent loss of the airplane.

DATES: This AD becomes effective June 18, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 18, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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 October 5, 2011 (76 FR 61641). That NPRM proposed to require correct an unsafe condition for the specified products. The MCAI states:

> Cases of corrosion findings have been reported on the overwing refueling aperture (used to fill the fuel tank by gravity) on the wing top skin. The reported corrosion was on the mating surface of the aperture flange, underneath the refuel adaptor. Corrosion findings have been repaired on a case by case basis in accordance with approved data.
>
> For certain aeroplanes (identified by MSN in the applicability section of this [European Aviation Safety Agency (EASA)] AD, the provided repair contained instructions to apply primer coating on the mating surface. Since doing those repairs, it has been found that this primer coating may prevent proper electrical bonding provision between the overwing refuelling cap adaptor and the wing skin.
>
> This condition, if not corrected, could, in combination with a lightning strike in this area, create a source of ignition in a fuel tank, possibly resulting in a fire or explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a one-time electrical bonding check between the gravity fill re-fuel adaptor and the top skin panels on the affected aeroplanes and, in case of findings [a general visual inspection for corrosion of the component interface and adjacent area], the application of the associated corrective actions [i.e. repair].

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 Permit a Ferry Flight

US Airways stated that there currently is no fly-back allowance in the NPRM (76 FR 61641, October 5, 2011). US Airways also stated that this makes it difficult for airlines to schedule the inspection quickly, which is the most desirable situation.

We infer that US Airways is requesting a ferry flight permit. We partially agree with this request. Unless otherwise specified in the AD, special flight permits are currently allowed under section 39.23 of the Federal Aviation Regulations (14 CFR 39.23). No change is therefore necessary to the AD regarding this issue.

Request That the FAA Accept Published Service Repair Manual (SRM) Repairs as an FAA-Approved Corrective Action for Compliance With the AD

US Airways stated that it asked Airbus to provide an SRM repair for expected findings, and that it has been informed by Airbus that a repair design was expected to be published in the February 2012 revision of the SRM. US Airways requested that a statement in the final rule be added to acknowledge that published SRM repairs are a FAA-approved corrective action for the proposed AD (76 FR 61641, October 5, 2011).

We partially agree with US Airways' request. We understand US Airways' concern regarding the unavailability of repair procedures and its effect on their scheduling of repairs since a discrepancy requires repair before further flight. However, we cannot provide approval of future SRM repairs in an AD by using the phrase, ''or later FAA-approved revisions,'' because it violates the Office of the Federal Register regulations for approving materials that are incorporated by reference. However, we consider that service information (including SRM repair) approved by EASA (or its delegated agent) is equivalent to FAA-approved corrective action for this AD, if it meets the certification basis of the affected airplanes and mitigates the unsafe condition addressed in this AD. We have not changed this AD in this regard.

Request To Revise the Costs of Compliance

United Airlines requested that the ''Costs of Compliance'' section of the NPRM (76 FR 61641, October 5, 2011) be revised. United Airlines stated that under the ''Costs of Compliance'' section in the NPRM, an estimate of 6 work-hours is specified to comply with the NPRM. United Airlines stated that Airbus Service Bulletin A320–57–1152, dated June 14, 2010, specifies a total of 12.5 work-hours to accomplish this inspection. United Airlines stated that Airbus Service Bulletin A320–57–1152, dated June 14, 2010, provides a more accurate representation of the work-hours required for this task, and it requests that the FAA justify its proposed estimate of 6 work-hours required to comply with the NPRM.

In addition, United Airlines stated that, when accomplishing paragraph (g)(2) of the NPRM (76 FR 61641, October 5, 2011), which requires performing a general visual inspection for corrosion if the resistance value is greater than 10 milliOhms, the operator is directed to section. 3.C.(2) of the Accomplishment Instructions, Subtask 571152–832–401–001—Removal of Primer—Inspection for Corrosion, of Airbus Service Bulletin A320–57–1152, dated June 14, 2010. United Airlines stated that this subtask's ''Manpower Resources'' chart specifies that it takes ''5 man-hours and 2.5 hours elapsed time'' to complete that part of that service bulletin, and that under this subtask, Step (a), among other actions, requires defueling and venting of the two fuel tanks. United Airlines also stated that operator experience has shown that this procedure alone takes about ''8 man-hours and 4 hours of elapsed time.'' United Airlines stated it understands that it is not standard practice to propose manufacturers' service bulletin changes through the FAA, but it would like to offer a more accurate estimate of at least ''10 man-hours and 6 hours elapsed time,'' in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010.

We agree with United Airlines' request to revise the ''Costs of Compliance'' section of this AD. We have clarified the ''Costs of Compliance'' section by estimating that it would take about 2 work-hours to perform the initial action (electrical bonding test). In addition, we have estimated that it would take about 12 work-hours to perform the follow-on actions (inspection for corrosion and repair). We have changed this AD accordingly.

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 61641, October 5, 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 61641, October 5, 2011).

Costs of Compliance

We estimate that this AD will affect 67 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements (electrical bonding test) 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 $11,390, or $170 per product.

In addition, we estimate that any necessary follow-on actions (inspection for corrosion and repair) would take about 12 work-hours and require parts costing $0, for a cost of $1,020 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 (76 FR 61641, October 5, 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:

2012–09–07 Airbus: Amendment 39–17042. Docket No. FAA–2011–0998; Directorate Identifier 2011–NM–046–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 18, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A319–111, –112, and –132 airplanes; Model A320–111, –211, –212, –214 and –232 airplanes; and Model A321–111, –211, –212, and –231 airplanes; certificated in any category; having manufacturer serial numbers 0039, 0078, 0109, 0118, 0120, 0153, 0174, 0187, 0203, 0215, 0218, 0226, 0227, 0228, 0236, 0237, 0269, 0270, 0278, 0285, 0286, 0287, 0288, 0294, 0301, 0337, 0377, 0462, 0463, 0464, 0465, 0520, 0523, 0528, 0876, 0888, 0921, 0935, 0974, 1014, 1102, 1130, 1160, 1162, 1177, 1215, 1250, 1287, 1336, 1388, 1404, 1444, 1449, 1476, 1505, 1524, 1564, 1605, 1616, 1622, 1640, 1645, 1658, 1677, 1691, 1729, and 1905.

(d) Subject

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

(e) Reason

This AD was prompted by reports that corrosion was found on the overwing refueling aperture on the top wing skin, and that for certain airplanes, repairs made using primer coating may prevent proper electrical bonding provision between the overwing refueling cap adaptor and the wing skin. We are issuing this AD to detect and correct corrosion and improper bonding, which in combination with a lightning strike in this area, could create a source of ignition in a fuel tank, resulting in a fire or explosion, and consequent loss 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) Electrical Bonding Test and General Visual Inspection if Necessary

Within 24 months after the effective date of this AD, do an electrical bonding test to check for bonding between the re-fuel adaptor of the gravity fill and the top skin panels on the left-hand and right-hand wings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010.

(1) If the resistance value is 10 milliOhms or less at the left-hand and right-hand wing, no further action is required.

(2) If the resistance value is greater than 10 milliOhms at the left-hand or right-hand wing, before further flight, do a general visual inspection for corrosion of the component interface and adjacent area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010. If any corrosion is found during the inspection, before further flight, repair the gravity fill fuel adaptor, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010; except where Airbus Service Bulletin A320–57–1152, dated June 14, 2010, specifies to contact Airbus, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(h) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. 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.

(i) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0034, dated March 2, 2011; and Airbus Service Bulletin A320–57–1152, dated June 14, 2010; 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) Airbus Service Bulletin A320–57–1152, dated June 14, 2010.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 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 30, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–11027 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0993; Directorate Identifier 2011–NM–018–AD; Amendment 39–17043; AD 2012–09–08]

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 767–200 and –300 series airplanes. This AD was

prompted by reports of multiple site damage cracks in the radial web lap and tear strap splices of the aft pressure bulkhead at station (STA) 1582 due to fatigue. This AD requires repetitive inspections for cracking of the aft pressure bulkhead at STA 1582, repair or replacement of any cracked bulkhead, and eventual replacement of the aft pressure bulkhead at STA 1582 with a new bulkhead. Accomplishing the replacement terminates the repetitive inspections required by this AD. We are issuing this AD to prevent fatigue cracking of the aft pressure bulkhead, which could result in rapid decompression of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

DATES: This AD is effective June 18, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 18, 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, WA 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: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone (425) 917–6577; fax (425) 917–6590; email: *berhane.alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 27, 2011 (76 FR 59590). That NPRM proposed to require repetitive inspections for cracking of the aft pressure bulkhead at station (STA) 1582, repair or replacement of any cracked bulkhead, and eventual replacement of the aft pressure bulkhead at STA 1582 with a new bulkhead. That proposed AD specified that accomplishing the replacement would terminate the repetitive inspections specified in the NPRM.

Comments

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

Support for NPRM (76 FR 59590, September 27, 2011)

American Airlines has no objection to the NRPM (76 FR 59590, September 27, 2011), and noted that it will incorporate the requirements into its maintenance program.

Request To Include AD 2004–14–19, Amendment 39–13728 (69 FR 42549, July 16, 2004) in NPRM (76 FR 59590, September 27, 2011) Requirements

Boeing and Airborne Express (ABX) asked that the requirements in AD 2004–14–19, Amendment 39–13728 (69 FR 42549, July 16, 2004), be added to the affected ADs section and the related requirements of the NPRM (76 FR 59590, September 27, 2011). Boeing stated that this would ensure that the initial actions in paragraphs (b), (c), and (d) of AD 2004–14–19 begin 50,000 flight cycles after the aft pressure bulkhead has been replaced. ABX recommend that we add a paragraph that allows a 50,000 flight cycle threshold on a new aft pressure bulkhead for the inspections required by AD 2004–14–19.

We do not agree to include AD 2004–14–19, Amendment 39–13728 (69 FR 42549, July 16, 2004), in the affected ADs section and related requirements of this AD. We have determined that an unsafe condition exists, and that the actions this AD requires are adequate to ensure the continued safety of the affected fleet. The commenter's suggested changes would alter the actions currently required by this AD, so additional rulemaking would be required. We find that delaying this action would be inappropriate in light of the identified unsafe condition. We have not changed this final rule regarding this issue. However, operators can always request approval of an alternative method of compliance (AMOC) for AD 2004–14–19.

Request To Clarify Terminating Action for Other ADs

Boeing asked that we change paragraph (g) of the NPRM (76 FR 59590, September 27, 2011) to remove the terminating action for the repetitive inspections specified in paragraph (b) of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004). Boeing stated that the inspections required by paragraph (b) of AD 2004–05–16 are not terminated by doing the inspections required by paragraph (g) of the NPRM. Boeing added that the inspections required by AD 2004–05–16 are for cracking of the web of the aft pressure bulkhead at the web y-chord joint. Boeing noted that this cracking pattern, location, and growth rate are not covered by the inspection in paragraph (g) of the NPRM.

We agree with the commenter for the reasons provided. We have removed the terminating action for the repetitive inspections required by AD 2004–05–16 (69 FR 10917, March 9, 2004) from paragraph (g) of this AD.

Boeing also requested that we revise paragraph (g) of the NPRM (76 FR 59590, September 27, 2011) to specify that accomplishing the inspections in paragraph (g) of the NPRM terminates the ''initial'' and repetitive inspections required by paragraphs (f) ''and (h)'' of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119).

We partially agree with the commenter. Doing the inspections required by paragraph (g) of this AD replaces the inspections (repetitive) required by paragraph (f) of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119). We have revised paragraph (g) of this AD accordingly. However, the inspection required by paragraph (h) of AD 2005–03–11 is a one-time inspection of the ''oil can'' locations of the aft pressure bulkhead web, which is not in the same location as the inspections required by paragraph (g) of the NPRM (76 FR 59590, September 27, 2011). Therefore the requirements in paragraph (h) of AD 2005–03–11 cannot be terminated by the inspections required by paragraph (g) of

this AD. However, under the provisions of paragraph (i) of this AD, we will consider requests to provide such relief through approval of an AMOC if sufficient data are submitted to substantiate that the terminating action would also provide an acceptable level of safety.

Boeing also asked that we revise paragraph (h) of the NPRM (76 FR 59590, September 27, 2011) to specify that doing the replacement specified in paragraph (h) of the NPRM terminates the actions required by paragraphs (a) and (b) of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004) and the actions required by paragraphs (f) and (h) of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119).

We agree with the commenter. Once the replacement required by paragraph (h) of this AD is done, it is not necessary to do the inspections required by paragraphs (a) and (b) of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004) and paragraphs (f) and (h) of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119). We have revised paragraph (h) of this AD accordingly.

Request To Include Inspection in Airworthiness Limitations

ABX asked that we add a new paragraph following paragraph (h) of the NPRM (76 FR 59590, September 27, 2011), which allows synchronizing the maintenance program and the AD requirements for all airplanes equipped with improved aft pressure bulkheads. ABX added that we should mandate the airworthiness limitations (AWLs) for the maintenance on aft pressure bulkheads that have been replaced, in order to relieve the burden of requesting AMOCs. ABX added that the improved aft pressure bulkhead should have the same maintenance requirements whether it was installed on an airplane in production or in service.

We partially agree with the commenter. We agree that the actual dimensional and material configuration of the modified aft pressure bulkhead is identical to the later production airplanes. However, although the configuration is identical, the fatigue life of the bulkhead is not. All Model 767 airplanes, including the fatigue test airplanes, are subject to limit test pressurization loads during production. This limit loading substantially enhances the fatigue life of the structure. We have made no change to the AD in this regard.

Clarification of Effect of Winglet Installation

We have added new Note 1 to paragraph (c) of this AD to state that supplemental type certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17.

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. 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 83 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
Inspections	22 work-hours × $85 per hour = $1,870 per inspection cycle	$0	$1,870	$155,210
Replacement	1,541 work-hours × $85 per hour = $130,985	399,539	530,524	44,033,492

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):

2012–09–08 The Boeing Company: Amendment 39–17043; Docket No.

FAA–2011–0993; Directorate Identifier 2011–NM–018–AD.

(a) Effective Date

This AD is effective June 18, 2012.

(b) Affected ADs

Certain requirements of this AD affect certain requirements of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004), and AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119).

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009.

Note 1 to paragraph (c) of this AD: Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of multiple site damage cracks in the radial web lap and tear strap splices of the aft pressure bulkhead at station (STA) 1582 due to fatigue. We are issuing this AD to prevent fatigue cracking of the aft pressure bulkhead, which could result in rapid decompression of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Except as provided by paragraph (h) of this AD: Before the accumulation of 43,000 total flight cycles, or within 1,600 flight cycles after the effective date of this AD, whichever occurs later, do detailed, low-frequency eddy current, and mid-frequency eddy current inspections for cracking of the aft pressure bulkhead at STA 1582, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009. If any crack is found, before further flight, replace the bulkhead as required by paragraph (h) of this AD, or repair the crack in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009, and repeat the inspections thereafter at intervals not to exceed 1,600 flight cycles. If no crack is found, repeat the inspections thereafter at intervals not to exceed 1,600 flight cycles. Accomplishing the inspections required by this paragraph terminates the inspections required by paragraph (f) of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119).

(h) Replacement

Except as provided by paragraph (g) of this AD: Before the accumulation of 43,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs later: Replace the aft pressure bulkhead at STA 1582 with a new bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009. Accomplishing the replacement in this paragraph terminates the repetitive inspections required by paragraph (g) of this AD. Accomplishing the replacement in this paragraph also terminates the inspections required by paragraphs (a) and (b) of AD 2004–05–16, Amendment 39–13511 (69 FR 10917, March 9, 2004), and paragraphs (f) and (h) of AD 2005–03–11, Amendment 39–13967 (70 FR 7174, February 11, 2005), corrected on March 11, 2005 (70 FR 12119).

(i) 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.

(j) Related Information

For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone (425) 917–6577; fax (425) 917–6590; email: *berhane.alazar@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) under 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Boeing Alert Service Bulletin 767–53A0139, dated November 12, 2009.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 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 referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

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

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

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–11029 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0099; Airspace Docket No. 12–ASO–11]

Amendment of Class D Airspace; Cocoa Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment, correction.

SUMMARY: This action corrects an error in the legal description of a final rule; technical amendment, published in the **Federal Register** on April 11, 2012 that amends Class D airspace at Cocoa Beach, FL.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket No. FAA–2012–0099, Airspace Docket No. 12–ASO–11, published on April 11, 2012 (77 FR 21662), amends Class D airspace at Cape Canaveral Skid Strip, Cocoa Beach, FL. A typographical error was made in the regulatory text, stating the radius of controlled airspace at Cape Canaveral Skid Strip to be 4.4 miles, instead of 4.5 miles. This action corrects this error. Class D airspace designations are published in paragraph 5000 of FAA Order 74009.V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the radius of the controlled Class D airspace area for Cape Canaveral Skid Strip, Cocoa Beach, FL, as published in the **Federal Register** of April 11, 2012 (77 FR 21662) (FR Doc. 2012–8558) is corrected as follows:

ASO FL D Cocoa Beach, FL [Corrected]

Cape Canaveral Skid Strip, FL

On page 21663, column 3, line 4 of the legal description, remove ''within a 4.4-mile radius of the Cape Canaveral Skid Strip, and insert ''within a 4.5-mile radius of the Cape Canaveral Skid Strip.''

Issued in College Park, Georgia, on April 30, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–11399 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0014; Airspace Docket No. 12–AEA–1]

Amendment of Class D and E Airspace; Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Class D and E airspace at Martin State Airport, Baltimore, MD. The geographic coordinates of the Baltimore VORTAC are being adjusted to coincide with the FAA's aeronautical database, which show the correct coordinates. This does not affect the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, May 14, 2012.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA is adjusting the geographic location of Baltimore VORTAC, Baltimore, MD, to be in concert with the FAAs aeronautical database, which shows the correct coordinates. This is an administrative change and does not affect the boundaries or operating requirements of the airspace; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class D and E airspace designations are published in Paragraphs 5000, 6002 and 6004 of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the geographic coordinates in the legal description of Class D airspace and Class E surface airspace, for Martin State Airport, Baltimore, MD. This update brings the geographic coordinates in concert with the FAA's Aeronautical Products database.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Martin State Airport, Baltimore, MD.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AEA MD D Baltimore, Martin State Airport, MD [Amended]

Martin State Airport, Baltimore, MD
(Lat. 39°19′32″ N., long. 76°24′50″ W.)
Baltimore VORTAC
(Lat. 39°10′16″ N., long. 76°39′41″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.2-mile radius of Martin State Airport and within 4.4 miles each side of a 14.7-mile radius arc of the Baltimore VORTAC extending clockwise from the Baltimore VORTAC 030° radial to the VORTAC 046° radial, excluding that airspace within the Washington Tri-Area Class B airspace area and Restricted Areas R–4001A and R–4001B when they are in effect. This

Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AEA MD E2 Baltimore, Martin State Airport, MD [Amended]

Martin State Airport, MD
(Lat. 39°19′32″ N., long. 76°24′50″ W.)
Baltimore VORTAC
(Lat. 39°10′16″ N., long. 76°39′41″ W.)

Within a 5.2-mile radius of Martin State Airport and within 4.4 miles each side of a 14.7-mile radius arc of the Baltimore VORTAC extending clockwise from the Baltimore VORTAC 030° radial to the VORTAC 046° radial, excluding that airspace within the Washington Tri-Area Class B airspace area and Restricted Areas R–4001A and R–4001B when they are in effect. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on April 30, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–11398 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1126; Airspace Docket No. 11–ACE–22]

Amendment of Class E Airspace; Omaha, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Omaha, NE. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Eppley Airfield. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date: 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Omaha, NE, area, creating additional controlled airspace at Eppley Airfield (76 FR 77448) Docket No. FAA–2011–1126. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Eppley Airfield, Omaha, NE. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Eppley Airfield, Omaha, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE NE E5 Omaha, NE [Amended]

Omaha, Eppley Airfield, NE
(Lat. 41°18′11″ N., long. 95°53′39″ W.)
Omaha, Offutt AFB, NE
(Lat. 41°07′10″ N., long. 95°54′31″ W.)
Council Bluffs, Council Bluffs Municipal Airport, IA
(Lat. 41°15′36″ N., long. 95°45′31″ W.)
Blair, Blair Municipal Airport, NE
(Lat. 41°24′53″ N., long. 96°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eppley Airfield, and within 1 mile each side of the 000° bearing from Eppley Airfield extending from the 6.9-mile radius to 8.5 miles north of the airport, and within 3 miles each side of the Eppley Airfield Runway 14R ILS Localizer course extending from the 6.9-mile radius to 12 miles northwest of the airport, and within a 7-mile radius of Offutt AFB, and within 4.3 miles each side of the Offutt AFB ILS Runway 30 localizer course extending from the 7-mile radius to 7.4 miles southeast of Offutt AFB,

and within a 6.4-mile radius of the Council Bluffs Municipal Airport, and within a 6.4-mile radius of Blair Municipal Airport, and within 2 miles each side of the 317° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 11.6 miles, and within 2 miles each side of the 137° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 12.2 miles.

Issued in Fort Worth, Texas, on April 5, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–11549 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1367; Airspace Docket No. 11–ASO–41]

Amendment of Class E Airspace; Tullahoma, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace in the Tullahoma, TN area, as the Arnold Air Force Base has been closed and controlled airspace associated with the airport is being removed. Airspace reconfiguration is necessary for the continued safety and airspace management of Instrument Flight Rules (IFR) operations within the Tullahoma, TN airspace area. This action also makes a minor adjustment to the geographic coordinates of the Tullahoma Regional Airport/Wm Northern Field.

DATES: Effective 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On March 2, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Tullahoma, TN (77 FR 12759). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Tullahoma, TN. Airspace reconfiguration is necessary due to the closing of Arnold Air Force Base, and supports new standard instrument approach procedures developed at Tullahoma Regional Airport/Wm Northern Field. Controlled airspace is necessary for the continued safety and management of IFR operations within the Tullahoma, TN, area. This action also adjusts the geographic coordinates of the Tullahoma Regional Airport/Wm Northern Field to be in concert with the FAAs aeronautical database.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO TN E5 Tullahoma, TN [Amended]

Tullahoma Regional Airport/Wm Northern Field, TN
(Lat. 35°22′48″ N., long. 86°14′48″ W.)
Winchester Municipal Airport
(Lat. 35°10′39″ N., long. 86°03′58″ W.)
Manchester Medical Center, Point In Space Coordinates
(Lat. 35°29′56″ N., long. 86°05′37″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tullahoma Regional Airport/Wm Northern Field and within 4 miles either side of the 360° bearing from the airport extending from the 7-mile radius to 12 miles north of the airport, and within an 11-mile radius of Winchester Municipal Airport, and within a 6-mile radius of the point in space (lat.

35°29′56″ N., long. 86°05′37″ W.) serving Manchester Medical Center.

Issued in College Park, Georgia, on April 30, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–11409 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1105; Airspace Docket No. 11–AGL–20]

Amendment of Class E Airspace; Decatur, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Decatur, IL. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Decatur Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. The geographic coordinates of the airport are also adjusted.

DATES: *Effective date:* 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Decatur, IL, area, creating additional controlled airspace at Decatur Airport (76 FR 77450) Docket No. FAA–2011–1105. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Decatur Airport, Decatur, IL. This action is necessary for the safety and management of IFR operations at the airport. This action also adjusts the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Decatur Airport, Decatur, IL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IL E5 Decatur, IL [Amended]

Decatur Airport, IL
(Lat. 39°50′04″ N., long. 88°51′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Decatur Airport, and within 2 miles each side of the 299° bearing from the airport extending from the 6.9-mile radius to 11 miles northwest of the airport.

Issued in Fort Worth, Texas, on April 5, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–11540 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2011–1396]

RIN 2120–AK10

Operations in Class D Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is removing the provision describing an abbreviated taxi clearance. Previously, air traffic controllers issued abbreviated taxi instructions to aircraft en route to their assigned departure runway, which

allowed pilots to cross all runways that intersected the taxi route to their departure runway. The FAA no longer uses these abbreviated taxi clearances and is removing the provision of the regulation that describes this clearance. This action aligns the regulation with current air traffic control practice and responds to the National Transportation Safety Board (NTSB) Safety Recommendation Numbers A–00–67 and –68.

DATES: Effective May 14, 2012.

Submit comments on or before June 13, 2012.

ADDRESSES: Send comments identified by docket number FAA–2011–1396 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rule, contact Ellen Crum, Airspace, Regulations and ATC Procedures Group, Air Traffic Organization, Mission Support Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783; facsimile (202) 267–9328, email; *Ellen.Crum@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Acting Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes, in more detail, the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Chapter 401, Section 40103 (b), which allows the Acting Administrator to regulate the use of the navigable airspace as necessary to ensure the safety of aircraft and the efficient use of airspace. Additionally, Subtitle VII, Part A, Subpart III, Chapter 447, Section 44701 (c) authorizes the Acting Administrator to carry out functions in this chapter in a way that helps to reduce or eliminate the possibility or recurrence of accidents in air transportation.

I. Background

In January 1990, the National Transportation Safety Board (NTSB) recommended that the FAA take action to address safety issues involving runway incursions and near-collision ground incidents.[1] That recommendation followed several high-profile incidents, including a 1990 ground collision at Atlanta Hartsfield Airport between an Eastern B727 and a King Air (resulting in one fatality and one injury).

On August 15, 2007, an FAA ''Call to Action'' committee issued several recommendations to address improving runway safety across the National Airspace System (NAS). The committee identified taxi clearances as a key area of concern. Following the committee's recommendations, the FAA convened a Safety Risk Management (SRM) panel of subject matter experts to review the committee's recommendations, including the NTSB recommendation to eliminate the issuance of a ''taxi to'' clearance found in 14 CFR 91.129(i).

NTSB Safety Recommendations A–00–67 and A–00–68 were reiterated in an NTSB Safety Recommendation, dated August 28, 2007, following the 2006 crash of Comair flight 5191, CL–600, which crashed during takeoff from Blue Grass Airport (LEX), Lexington, KY. The NTSB determined that a contributor to the probable cause of that accident, in which the flight crew was instructed to take off from runway 22 but began its takeoff roll on runway 26, was the FAA's failure to require that all runway crossings be authorized only by ATC clearances specific to the runway.

On September 11, 2008, the SRM panel issued its ''Explicit Runway Crossing Clearances Safety Risk Management Document (SRMD),'' which contained a proposal ''to implement explicit runway crossing clearances per NTSB recommendation A–00–67.''

In response to the NTSB's recommendation and effective June 30, 2010, the FAA implemented changes to the procedures for issuing taxi and ground movement instructions. The changes subsequently were incorporated into FAA Orders, JO 7110.65 Air Traffic Control and JO 7210.3 Facility Operation and Administration.

II. Immediately Adopted Final Rule

This action revises paragraph (i) of § 91.129 by removing the sentences that describe a ''clearance to 'taxi to' the takeoff runway assigned to the aircraft.'' This language is contradictory to current air traffic control procedures and could lead to confusion and incorrect pilot expectations. Removing this provision does not alter the requirement to have an appropriate ATC clearance. The FAA will continue to require all aircraft to receive an ATC clearance prior to entering any taxiway or runway.

The FAA finds, under 5 U.S.C. 553(b), that notice and public comment are impracticable and contrary to the public interest. Furthermore, the FAA finds that good cause exists under 5 U.S.C. 553(d) to make this rule effective upon publication. The changes to this section align the rule with current air traffic procedures and will not adversely affect the flow of taxiing aircraft. As this rule does not change the requirement to have an ATC clearance prior to taxiing, this amendment will not adversely impact safety and will avoid confusion that can be caused between contradictory regulations and ATC procedures. Nonetheless, the FAA invites parties to comment on this proceeding. A separate

[1] NTSB Safety Recommendations A–00–67 and A–00–68 on July 6, 2000. These actions recommended that the FAA require that all runway crossing be authorized only by specific air traffic control clearance and ensure that all U.S. pilots and personnel assigned to move aircraft and pilots operating under 14 CFR part 129 receive adequate notification of the change. The NTSB further recommended that when an aircraft needs to cross multiple runways, air traffic controllers must issue an explicit crossing instruction for each runway after the previous runway has been crossed.

notice will be issued by the FAA addressing any comments received.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows:

The changes to this section align the rule with current air traffic procedures and will not adversely affect the flow of taxiing aircraft. As this rule does not change the requirement to have an ATC clearance prior to taxiing, this amendment will not adversely impact safety and will avoid confusion that can be caused between contradicting regulations and ATC procedures. Further this rule responds to NTSB recommendations and to the August 15, 2007 FAA ''Call to Action'' Committee recommendations to address improving runway safety across the National Airspace System. That committee identified taxi clearances as a key area of concern. This action improves safety at no additional cost.

The FAA has, therefore, determined that this rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. This rule aligns the agency's regulations with current practice, responds to NTSB Safety Recommendation Numbers A–00–67 and A–00–68, and with no change in existing procedures there are no additional costs.

Therefore as the FAA Acting Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it will have only a domestic impact and therefore has no effect on international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132,

Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*or
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements and Yugoslavia.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend § 91.129 by revising paragraph (i) to read as follows:

§ 91.129 Operations in Class D airspace.

* * * * *

(i) *Takeoff, landing, taxi clearance.* No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC.

Issued in Washington, DC, on April 19, 2012.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2012–11593 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 111027661–2429–02]

RIN 0694–AF43

Entity List Additions; Corrections

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendments.

SUMMARY: This document corrects spelling errors in two final rules published by the Bureau of Industry and Security (BIS) amending the Export Administration Regulations (EAR) in April 2012. BIS published the first final rule in the **Federal Register** on Wednesday, April 18, 2012. That rule added three persons to the Entity List of the EAR (Supplement No. 1 to part 774). However, it misspelled the name and address for one of the persons added to the Entity List. This document corrects those errors.

BIS published a second final rule in the **Federal Register** on Friday, April 27, which added sixteen persons under eighteen entries to the Entity List. That rule misspelled the city used in the address for three of the persons added to the Entity List. This document corrects that error. Lastly, this document removes a hyphen in the address for one of the persons added to the Entity List in the April 27 final rule, to clarify it is an address and not an alias for that person added to the Entity List.

DATES: *Effective Date:* This rule is effective May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Correcting Amendments to the April 18, 2012 Final Rule

On April 18, 2012, BIS published the final rule, ''*Addition of Certain Persons on the Entity List: Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States*'' in the **Federal Register** (77 FR 23114). This amendment corrects two spelling errors: one error in the name and one error in the address of a person who was added to the Entity List in the April 18 final rule under the destination of Jordan.

The name and address of this person should have been listed as follows:

(1) *Masoud Est. for Medical and Scientific Supplies,* 74 First Floor, Tla'a Al Ali Khali Al Salim Street, Amman, Jordan 11118.

Correcting Amendments to the April 27, 2012 Final Rule

On April 27, 2012, BIS published the final rule, ''*Addition of Certain Persons to the Entity List*'' in the **Federal Register** (77 FR 25055). This amendment corrects the spelling of the city of Sharjah, which was incorrectly spelled in the addresses for three of the persons added to the Entity List under the destination of United Arab Emirates. Lastly, this rule removes a hyphen from the address of a person who was added under the destination of Pakistan to clarify the text is the address of this person and not an alias.

The name and address of these four persons should have been listed as follows:

Pakistan

(1) *Jalaluddin Haqqani,* a.k.a., the following seven aliases:

—General Jalaluddin;
—Haqqani Sahib;
—Maulama Jalaluddin;
—Maulawi Haqqani;
—Molvi Sahib;
—Mulawi Jalaluddin; *and*
—Mullah Jalaluddin.
—Miram Shah, Pakistan.

United Arab Emirates

(1) *Al Maskah Used Car and Spare Parts,* Maliha Road, Industrial Area 6, Sharjah, U.A.E.;

(2) *Feroz Khan,* a.k.a., the following three aliases:

—Haaje Khan;
—Haaji Khan; *and*
—Firoz.

Maliha Road, Industrial Area 6, Sharjah, U.A.E.; *and*

(3) *Zurmat General Trading,* Office No. 205, Platinum Business Center, Baghdad Street, Al-Nahda 2, Al-Qusais, Dubai, U.A.E.; *and* P.O. Box No. 171452, Dubai, U.A.E.; *and* 1st Street, Industrial Area 4th, Sharjah, U.A.E. (Behind the Toyota Showroom), *and* P.O. Box 35470, Sharjah, U.A.E.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (5 U.S.C. 553), BIS finds that there is good cause to waive the opportunity for public comment and delay in effective date for this correction. This action merely corrects clerical errors in the previous text that have no substantive affect. Because the corrections do not affect the substantive rights or obligations of any party, the public has little interest in the rule, and so prior notice and opportunity for comment are unnecessary. Accordingly, prior notice and opportunity for comment, as well as the delay in effectiveness of this rule, are hereby waived. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By revising under Jordan, in alphabetical order, one Jordanian entity;

■ b. By revising under Pakistan, in alphabetical order, one Pakistani entity; and

■ c. By revising under the United Arab Emirates, in alphabetical order, three Emirati entities.

The revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
JORDAN	Masoud Est. for Medical and Scientific Supplies, 74 First Floor, Tla'a Al Ali Khali Al Salim Street, Amman, Jordan 11118.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 23114, 4/18/12.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
PAKISTAN				
*	* *	*	* *	*
	Jalaluddin Haqqani, a.k.a., the following seven aliases: —General Jalaluddin; —Haqqani Sahib; —Maulama Jalaluddin; —Maulawi Haqqani; —Molvi Sahib; —Mulawi Jalaluddin; *and* —Mullah Jalaluddin. Miram Shah, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 25055, 4/27/12.
*	* *	*	* *	*
UNITED ARAB EMIRATES				
*	* *	*	* *	*
	Al Maskah Used Car and Spare Parts, Maliha Road, Industrial Area 6, Sharjah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 25055, 4/27/12.
*	* *	*	* *	*
	Feroz Khan, a.k.a., the following three aliases: —Haaje Khan; —Haaji Khan; *and* —Firoz. Maliha Road, Industrial Area 6, Sharjah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 25055, 4/27/12.
*	* *	*	* *	*
	Zurmat General Trading, Office No. 205, Platinum Business Center, Baghdad Street, Al-Nahda 2, Al-Qusais, Dubai, U.A.E.; *and* P.O. Box No. 171452, Dubai, U.A.E.; *and* 1st Street, Industrial Area 4th, Sharjah, U.A.E. (Behind the Toyota Showroom), *and* P.O. Box 35470, Sharjah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 25055, 4/27/12.
*	* *	*	* *	*

Dated: May 8, 2012.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2012–11555 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2012–N–0002]

Oral Dosage Form New Animal Drugs; Change of Sponsor; Griseofulvin Powder; Levamisole Hydrochloride Powder; Oxytetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for five abbreviated new animal drug applications (ANADAs) for griseofulvin powder, levamisole hydrochloride soluble powder, and oxytetracycline hydrochloride soluble powder from Teva Animal Health, Inc., to Cross Vetpharm Group, Ltd.

DATES: This rule is effective May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8300, *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Teva Animal Health, Inc., 3915 South 48th St. Ter., St. Joseph, MO 64503, has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–391 for Griseofulvin Powder, ANADAs 200–146 and 200–247 for Oxytetracycline Hydrochloride Soluble Powder, and ANADAs 200–313 and 200–386 for Levamisole Hydrochloride Soluble Pig Wormer and Drench Powder to Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland. Accordingly, the agency is amending the regulations in part 520 (21 CFR part 520) to reflect the transfer of ownership and a current format.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1100 [Amended]

■ 2. In paragraph (b)(2) of § 520.1100, remove ''059130'' and in its place add ''061623''.

■ 3. In § 520.1242, revise the section heading to read as follows:

§ 520.1242 Levamisole.

■ 4. In § 520.1242a, revise the section heading to read as set forth below, and in paragraph (b)(4) remove ''059130'' and in its place add ''061623''.

§ 520.1242a Levamisole powder.

* * * * *

§ 520.1660d [Amended]

■ 5. In § 520.1660d, in paragraphs (b)(5), (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), (d)(1)(ii)(C)(*3*), and (d)(1)(iii)(C), remove ''059130'' and in its place add ''061623''.

Dated: May 7, 2012.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2012–11382 Filed 5–11–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1172]

RIN 1625–AA00

Safety Zone; America's Cup World Series, East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones in the navigable waters of the East Passage, Narragansett Bay, Rhode Island, during the America's Cup World Series (ACWS) sailing vessel racing event.

DATES: This rule is effective June 13, 2012 until 5:00 p.m. on July 1, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–1172 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–1172 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Edward G. LeBlanc, Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401–435–2351, email *Edward.G.LeBlanc@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 10, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zones; America's Cup World Series, East Passage, Narragansett Bay, RI'' in the **Federal Register** (77 FR 7025). We received one comment on the proposed rule.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

This rule is necessary to provide for the safety of life and navigation for both participants and spectators involved with the America's Cup World Series in the vicinity of Newport, RI.

Discussion of Comments and Changes

One comment was received, supporting this rule. The commenter believed the safety zones established by this rule will improve navigation safety for all mariners and facilitate a safe America's Cup World Series event. No changes were made to the language contained in the NPRM.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

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

We expect the economic impact of this rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from the East Passage of Narragansett Bay by the designated safety zone for a maximum of six hours per day for a maximum of 10 days; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by these safety zones; many vessels, especially recreational vessels, may transit in all

portions of the affected waterway except for those areas covered by the safety zones; and vessels may enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's representative.

Notifications of the ACWS and associated safety zones will be made to mariners through the Rhode Island Port Safety Forum, local Notice to Mariners, event sponsors, and local media well in advance of the event.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: Owners or operators of vessels intending to transit, fish, or anchor in the East Passage of Narragansett Bay, Rhode Island, during the ACWS races.

The rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from the designated safety zone for a maximum of six hours per day for a maximum of 10 days; vessels may transit in all portions of the affected waterway except for those areas covered by the safety zones, and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Any comments made in response to the previously published Notice of Proposed Rulemaking for this

action were also considered in arriving at this conclusion. This rule is categorically excluded, under figure 2–1, paragraphs (34)(g) and (34)(h) of the Instruction since it involves establishment of safety zones for marine related events. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new § 165.T1172 to read as follows:

§ 165.T1172 Safety Zones; America's Cup World Series, East Passage, Narragansett Bay, Rhode Island.

(a) *Location.* The following areas are safety zones:

(1) Safety zone ''North'', an area bounded by the following coordinates:

(i) 41–29.806N, 071–21.504W
(ii) 41–30.049N, 071–20.908W
(iii) 41–28.883N, 071–19.952W
(iv) 41–28.615N, 071–19.952W

(2) Safety zone ''South'', an area bounded by the following coordinates:

(i) 41–28.432N, 071–21.628W
(ii) 41–28.898W, 071–20.892W
(iii) 41–29.992W, 071–21.013W
(iv) 41–29.287N, 071–20.406W
(v) 41–28.894N, 071–19.958W
(vi) 41–28.085N, 071–21.211W

(b) *Enforcement Period.* Vessels will be prohibited from entering these safety zones during the America's Cup World Series (ACWS) sailing vessel racing events between 11 a.m. and 5 p.m. each day from Friday, June 22, 2012 to Sunday, July 1, 2012.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Patrol Commander.* The Coast Guard may patrol each safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

(4) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the safety zones established in conjunction with the America's Cup World Series, East Passage, Narragansett Bay, Newport, RI. These regulations may be enforced for the duration of the event.

(2) No later than 10 a.m. each day of the event, the Coast Guard will announce via Safety Marine Information Broadcasts and local media which of the safety zones, either ''North'' or ''South'', will be enforced for that day's America's Cup World Series races.

(3) Vessels may not transit through or within the safety zones during periods of enforcement without Patrol Commander approval. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger participants or other crafts in the event.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the safety zones unless authorized by an official patrol vessel.

(5) The Patrol Commander may control the movement of all vessels in the safety zones. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may delay or terminate the ACWS at any time to ensure safety. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

Dated: May 2, 2012.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2012–11557 Filed 5–11–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0315]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Mile 183.0 to 183.5

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, from mile 183.0 to mile 183.5, in the vicinity of the Merchants Bridge and extending the entire width of the river. This safety zone is needed to protect repair workers and vessels transiting the area on the Upper Mississippi River to complete bridge repairs. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: *Effective Date:* This rule is effective in the CFR from May 14, 2012 until 7 p.m. on December 31, 2012. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. on April 10, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0315 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2012–0315 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Chief Petty Officer Ryan Christensen, Sector Upper Mississippi River Waterways Management Department at telephone 314–269–2721, email

Ryan.D.Christensen@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not using the NPRM process. On April 10, 2012, the Coast Guard received notice that a marine casualty caused damage to a railway bridge on April 9, 2012. Immediate repairs are now required for the bridge. This short notice did not allow for the time needed to publish a NPRM and provide for a comment period. Delaying this rule by publishing a NPRM would be contrary to the public interest by unnecessarily delaying the bridge repairs and the safety zone needed to protect repair workers and vessels transiting the area on the Upper Mississippi River. Additionally, delaying the repairs and inspections for the NPRM process would unnecessarily impede the flow of commercial river traffic and railroad traffic. This rule is needed to protect repair workers and vessels transiting this area on the Upper Mississippi River.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule by providing 30 days notice would be contrary to the public interest by unnecessarily delaying the bridge repairs and the safety zone needed to protect repair workers and vessels transiting the area on the Upper Mississippi River.

Basis and Purpose

On April 9, 2012, a marine casualty involving a down bound crane barge striking the Merchants Bridge resulted in structural damage to the bridge, reduced vertical clearance, hanging wreckage, and a North-side railroad track closure. Initial repairs to the bridge started immediately with Saint Louis Bridge Construction performing a series of repairs and inspections on the Merchants Bridge in the vicinity of mile 183.0 to 183.5 on the Upper Mississippi River. After initial repairs, ongoing and intermittent inspections and full repairs will continue and the Coast Guard determined that a temporary safety zone is necessary to protect repair workers and marine traffic. Establishing this safety zone around the Merchants Bridge and repair personnel and equipment is intended to safeguard against disruption of positioned repair equipment, potential large falling debris, and possible hazards related to ongoing repairs in and around commercial traffic in the vicinity of mile 183.0 to 183.5 on the Upper Mississippi River.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, from mile 183.0 to 183.5, in the vicinity of Merchants Bridge and extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons unless specifically authorized by the Captain of the Port Upper Mississippi River. This rule is effective from 7 a.m. on April 10, 2012 through 7 p.m. on December 31, 2012, but will only be enforced during intermittent repair and inspection operation periods that will be announced by broadcast notices to mariners with the greatest advance notice possible. Due to the unpredictability of the Upper Mississippi River, National Weather Service's forecasts will be used to determine the most suitable conditions for bridge repairs and inspections. Advanced notice will be given to the maximum extent possible, but despite best efforts, the safety zone may be established with minimal notice when ideal work conditions are identified. The Captain of the Port Upper Mississippi River will inform the public and maritime industry through broadcast notice to mariners of the enforcement periods and changes to the safety zone and its enforcement.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule will be effective until December 31, 2012 unless repairs and inspections are completed sooner, it will only be enforced for limited time periods during days scheduled for repair work or bridge inspections. By enforcing this safety zone for limited periods of time throughout the effective period, marine traffic will not be significantly impacted. Entry into or passage through the safety zone will be considered on a case-by-case basis by the Captain of the Port Upper Mississippi or designated representative. Notifications of, and changes to, the enforcement period will be made via broadcast notice to mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Upper Mississippi River, mile 183.0 to 183.5 during enforcement periods. The enforcement periods will be for a limited duration. By enforcing this safety zone for a limited duration of time intermittently throughout the effective period, marine traffic will not be significantly impacted. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be enforced during limited periods of time throughout the effective period.

If you are a small business entity and are significantly affected by this regulation, please contact Chief Petty Officer Ryan Christensen, Sector Upper Mississippi River Response Department at telephone 314–269–2721, email *Ryan.D.Christensen@uscg.mil.*

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. This rule establishes a safety zone related to effecting bridge repairs and is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T08–0315 is added to read as follows:

§ 165.T08–0315 Safety Zone; Upper Mississippi River, Mile 183.0 to 183.5.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River, mile 183.0 to 183.5, in the vicinity of the Merchants Bridge, extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 7 a.m. on April 10, 2012 through 7 p.m. on December 31, 2012.

(c) *Periods of Enforcement.* This rule will be enforced intermittently during the effective period when conditions are conducive for bridge repairs and inspections based on contractor

availability, river forecasts, and observed weather. The Captain of the Port Upper Mississippi River will inform the public of the enforcement periods and any changes through broadcast notice to mariners.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River may be contacted at 314–269–2332 or VHF–FM 16.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

Dated: April 10, 2012.

B.L. Black,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2012–11539 Filed 5–11–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO28

Copayments for Medications in 2012

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms as final, without change, an interim final rule amending the Department of Veterans Affairs (VA) medical regulations concerning the copayment required for certain medications. The interim final rule froze until December 31, 2012, the copayment amount for veterans in the VA health care system in enrollment priority categories 2 through 6 at the 2011 level, which was $8. The interim final rule also froze until December 31, 2012, the maximum annual copayment amount for enrollment priority categories 2 through 6, which was $960. On January 1, 2013, the copayment amounts may increase based on the prescription drug component of the Medical Consumer Price Index (CPI–P). If the copayment increases, the maximum annual copayment amount will automatically increase in turn.

DATES: *Effective Date:* This rule is effective May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: An interim final rule amending VA's medical regulations concerning the copayment required for certain medications was published in the **Federal Register** on December 20, 2011 (76 FR 78824). Interested persons were invited to submit comments to the interim final rule on or before February 21, 2012, and we received no comments. Therefore, based on the rationale set forth in the interim final rule, VA is adopting the interim final rule as a final rule with no changes.

Administrative Procedure Act

This document affirms as final, without change, the interim final rule that is already in effect. In accordance with 5 U.S.C. 553(b)(3)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. The Secretary found that it was impracticable, unnecessary, and contrary to the public interest to delay this regulation for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2012, might have caused a significant financial hardship for some veterans. Nevertheless, the Secretary invited public comment on the interim final rule but did not receive any comments.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. This final rule affects individuals and has no impact on small entities. Therefore, under 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 7, 2012 for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims; Day care; Dental health; Drug abuse; Foreign relations; Government contracts; Grant programs—health; Grant programs—veterans; Health care; Health facilities; Health professions; Health records; Homeless; Medical and dental schools; Medical devices; Medical research; Mental health programs; Nursing homes; Philippines; Reporting and recordkeeping requirements; Scholarships and fellowships; Travel and transportation expenses; Veterans.

Dated: May 8, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of General Counsel, Department of Veterans Affairs.

PART 17—MEDICAL

■ Accordingly, the interim final rule amending 38 CFR part 17 that was published in the **Federal Register** at 76 FR 78824 on December 20, 2011, is adopted as a final rule without change.

[FR Doc. 2012–11486 Filed 5–11–12; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Mailings of Lithium Batteries

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 601.10.20, to incorporate standards that prohibit the outbound international mailing of lithium batteries and devices containing lithium batteries. This prohibition also extends to the mailing of lithium batteries to and from an APO, FPO, or DPO location. However, this prohibition does not apply to lithium batteries authorized under DMM 601.10.20 when mailed within the United States or its territories.

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

FOR FURTHER INFORMATION CONTACT: Joan Hall at 202–268–6010 or Margaret Falwell at 202–268–2576.

SUPPLEMENTARY INFORMATION: The Postal Service is taking this action to bring its international mailing standards into compliance with international standards for the acceptance of dangerous goods in international mail.

International standards have recently been the subject of discussion by the International Civil Aviation Organization (ICAO) and the Universal Postal Union (UPU), and the Postal Service anticipates that on January 1, 2013, customers will be able to mail specific quantities of lithium batteries internationally (including to and from an APO, FPO, or DPO location) when the batteries are properly installed in the personal electronic devices they are intended to operate.

Until such time that a less restrictive policy can be implemented consistent with international standards, and in accordance with UPU Convention, lithium batteries are not permitted in international mail. The UPU Convention and regulations are consistent with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (Technical Instructions). The Technical Instructions concerning the Transport of Dangerous Goods by Post do not permit ''dangerous goods'' as defined by the ICAO Technical Instructions in international mail. The prohibition on mailing lithium batteries and cells internationally also applies to mail sent by commercial air transportation to and from an APO, FPO, or DPO location.

This final rule describes the prohibitions established for mailpieces containing lithium metal or lithium-ion cells or batteries and applies regardless of quantity, size, watt hours, and whether the cells or batteries are packed *in* equipment, *with* equipment, or without equipment.

We will also revise and renumber Exhibit 601.10.20.7 to reflect ''watt-hour ratings'' instead of ''lithium content'' for secondary lithium-ion batteries when describing maximum quantity limits. In addition, the Postal Service has moved the lithium battery standards as it relates to international, APO, FPO or DPO locations to the International Mail Manual (IMM®).

The Postal Service will also make parallel changes to other USPS publications that make reference to the mailing of lithium batteries such as Publication 52, *Hazardous, Restricted, and Perishable Mail.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM):

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards For All Mailing Services

601 Mailability

* * * * *

10.0 Hazardous Materials

* * * * *

10.20 Miscellaneous Hazardous Materials (Hazard Class 9)

* * * * *

10.20.5 Primary Lithium (Non-Rechargeable) Cells and Batteries

[Revise 10.20.5 as follows:]

Small consumer-type primary lithium cells or batteries (lithium metal or lithium alloy) like those used to power cameras and flashlights are mailable domestically under the following conditions. Mailing batteries internationally, or to and from an APO, FPO, or DPO destination is prohibited regardless of mail class. See IMM 136 for details.

a. *General.* The following restrictions apply to the mailability of all primary lithium (non-rechargeable) cells and batteries:

1. Each cell must contain no more than 1.0 gram (g) of lithium content per cell.

2. Each battery must contain no more than 2.0 g aggregate lithium content per battery.

3. Each cell or battery must meet the requirements of each test in the UN Manual of Tests and Criteria, Part III, and subsection 38.3 as referenced in DOTs hazardous materials regulation at 49 CFR 171.7.

4. All outer packages must have a complete delivery and return address.

b. *Installed In Equipment.* The following additional restrictions apply to the mailing of primary cells or batteries properly installed *in* the equipment they operate:

1. The batteries installed in the equipment must be protected from damage and short circuit.

2. The equipment must be equipped with an effective means of preventing it from being turned on or activated.

3. The equipment must be cushioned to prevent movement or damage and be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

4. The mailpiece must not exceed 11 pounds.

c. *Mailed With Equipment.* The following additional restrictions apply to the mailing of primary cells or batteries shipped *with* (but not installed *in*) the device or equipment being mailed:

1. The shipment cannot contain more batteries than the number needed to operate the device.

2. The primary lithium cells and batteries must be packaged separately and cushioned to prevent movement or damage.

3. The shipment must be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

4. The outside of the package must be marked on the address side ''Package Contains Primary Lithium Batteries.''

5. The mailpiece must not exceed 11 pounds.

d. *Mailed Without Equipment.* The following additional restrictions apply to the mailing of primary cells or batteries without equipment:

1. The primary lithium cells and batteries must be mailed in ''the originally sealed packaging.''

2. The sealed packages of batteries must be separated and cushioned to prevent short circuit, movement, or damage.

3. The shipment must be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

4. They may only be sent via surface transportation.

5. The outside of the package must be marked on the address side ''Surface Mail Only, Primary Lithium Batteries—Forbidden for Transportation Aboard Passenger Aircraft.''

6. The mailpiece must not exceed 5 pounds.

10.20.6 Secondary Lithium-ion (Rechargeable) Cells and Batteries

[Revise 10.20.6 as follows:]

Small consumer-type lithium-ion cells and batteries like those used to power cell phones and laptop computers are mailable domestically under the following conditions. Mailing batteries internationally, or to and from an APO, FPO, or DPO destinations is prohibited regardless of mail class. See IMM 136 for details.

a. *General.* The following additional restrictions apply to the mailability of all secondary (rechargeable) lithium-ion cells and batteries:

1. The lithium content must not exceed 20 Wh (Watt-hour rating) per cell.

2. The total aggregate lithium content must not exceed 100 Wh per battery.

3. Each cell or battery must meet the requirements of each test in the UN Manual of Tests and Criteria, Part III, and subsection 38.3 as referenced in DOTs hazardous materials regulation at 49 CFR 171.7.

4. The mailpiece must not contain more than 3 batteries.

5. All outer packages must have a complete delivery and return address.

b. *Installed In Equipment.* The following additional restrictions apply to the mailing of secondary cells or batteries properly installed in equipment they operate:

1. The batteries installed in the equipment must be protected from damage and short circuit.

2. The equipment must be equipped with an effective means of preventing it from being turned on or activated.

3. The equipment must be cushioned to prevent movement or damage and be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail. The shipment must be mailed in a strong outer package.

c. *Mailed With Equipment.* The following additional restrictions apply to the mailing of secondary cells or batteries shipped with (but not installed in) the device or equipment being mailed:

1. The shipment cannot contain more batteries than the number needed to operate the device, up to three batteries.

2. The secondary lithium cells and batteries must be package separately and cushioned to prevent movement or damage.

3. The shipment must be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

4. The outside of the package must be marked on the address side ''Package Contains Lithium-ion Batteries (no lithium metal).''

d. *Mailed Without Equipment.* The following additional restrictions apply to the mailing of secondary cells or batteries without equipment:

1. The secondary lithium cells and batteries must be mailed in ''the originally sealed packaging'' and no more than three batteries.

2. The sealed packages of batteries must be separated and cushioned to prevent short circuit, movement, or damage.

3. The shipment must be contained in a strong enough sealed package to prevent crushing of the package or exposure of the contents during normal handling in the mail.

4. The outside of the package must be marked on the address side ''Package Contains Lithium-ion Batteries (no lithium metal).''

* * * * *

10.20.7 Damaged or Recalled Batteries

* * * * *

[Delete Exhibit 10.20.7, Lithium Battery Mailability Chart, in its entirety.]

[Insert new item 10.20.8 and Exhibit 10.20.8 as follows:]

10.20.8 Lithium Battery Mailability

To determine the mailability of primary (non-rechargeable) lithium metal and lithium alloy batteries, or secondary lithium-ion batteries, see exhibit below. For detailed information refer to 10.20.5 and 10.20.6 respectively.

EXHIBIT 10.20.8—LITHIUM BATTERY MAILABILITY CHART

Primary Lithium Batteries [1 2]	Surface transportation	Air transportation	Mailpiece weight limit
Small non-rechargeable consumer-type batteries			
Contained in (properly installed in equipment)	Mailable	Mailable	11 lb.
Packed with equipment but not installed in equipment.	Mailable	Mailable	11 lb.
Without the equipment they operate (individual batteries).	Mailable	Prohibited	5 lb.

1. Each primary cell must not contain more than 1g lithium content.
2. Each primary battery must not contain more than 2g lithium content.

Secondary Lithium-ion Batteries [3 4]	Surface transportation	Air transportation	Mailpiece battery limit
Small rechargeable consumer-type batteries			
Contained in (properly installed in equipment)	Mailable	Mailable	No more than 3 batteries.
Packed with equipment but not installed in equipment.	Mailable	Mailable	No more than 3 batteries.
Without the equipment they operate (individual batteries).	Mailable	Mailable	No more than 3 batteries.

3. Each secondary cell must not contain more than 20 Wh (Watt-hour rating) per cell.
4. Each secondary battery must not exceed 100 Wh per battery.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–11459 Filed 5–11–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0925; FRL–9669–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nonattainment New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on August 9, 2007. This revision pertains to the preconstruction permitting requirements of Pennsylvania's nonattainment New Source Review (NSR) program. The revision is intended to update Pennsylvania's nonattainment NSR regulations to meet EPA's 2002 NSR Reform regulations (NSR Reform), and to satisfy the requirements related to antibacksliding. Additionally, the proposed revision makes clarifying changes to regulations that are not related to NSR Reform. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on June 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0925. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814–2084, or by email at *Duke.Gerallyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On January 20, 2012 (77 FR 2937), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a SIP revision pertaining to preconstruction permitting requirements under Pennsylvania's nonattainment NSR program. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PA DEP) on August 9, 2007.

The history of this SIP, the NSR Reform Program, and *South Coast Air Quality Management District* v. *EPA* [1] (*South Coast)* decision regarding antibacksliding provisions of the Eight-Hour Ozone National Ambient Air Quality Standard (69 FR 23951), are described in the NPR. The purpose of this SIP revision is to incorporate

[1] In 2006, the United States Court of Appeals for the District of Columbia Circuit found in et al., 472 F.3d 882 (D.C. Cir. 2006) that NSR is a control measure and to weaken its requirements under the SIP would constitute impermissible backsliding under the CAA.

changes to Pennsylvania's nonattainment NSR rules made as a result of EPA's 2002 NSR Reform, and to address the antibacksliding provisions of the *South Coast* decision.

In summary, the current NSR Reform Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected actual methodology for determining whether a major modification has occurred; and (3) allow major stationary sources to comply with Plantwide Applicability Limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program (68 FR 63021 and 72 FR 32526). The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. In addition, as a result of the *South Coast* decision, all one-hour ozone NAAQS major NSR requirements must remain in place where classifications under the newer eight-hour ozone standard imposed less stringent NSR requirements.

II. Summary of SIP Revision

The SIP submittal consists of changes to 25 Pa. Code Chapter 121, General Provisions, and 25 Pa. Code Chapter 127, Construction, Modification, Reactivation, and Operation of Sources. This action will update Pennsylvania's nonattainment NSR regulations as previously approved on December 9, 1997 (62 FR 64722). It will incorporate for the first time the 2002 ''NSR Reform'' provisions into Pennsylvania's nonattainment NSR program, and will satisfy the requirements of the DC Circuit Court decision in *South Coast* regarding antibacksliding. The proposed regulations were adopted by Pennsylvania and became effective on May 19, 2007. Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the August 9, 2007 SIP revision, amending Pennsylvania's NSR construction, modification, reactivation and operation permit programs at 25 Pa. Code Section 121.1 and 25 Pa. Code Chapter 127, as a revision to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

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 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).

C. 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 July 13, 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 pertaining to Pennsylvania' nonattainment NSR program 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, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 19, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ a. Adding entries for Title 25, Sections 127.201a, 127.203a, and 127.218 in alphanumerical order.

■ b. Revising the existing entries for Title 25, Sections 121.1, 127.13, 127.201, 127.202, 127.203, 127.204 through 127.210, 127.212, 127.213, 127.215, and 127.217.

■ c. Removing the entries for Sections 127.211 and 127.214.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Title 25—Environmental Protection				
Article III—Air Resources				
Chapter 121—General Provisions				
Section 121.1	Definitions	5/19/07	5/14/2012 [*Insert page number where the document begins*].	Added 36 terms; Revised 9 terms; Removed 5 terms.
*	*	*	*	*
Chapter 127—Construction, Modification, Reactivation and Operation of Sources				
*	*	*	*	*
Subchapter B—Plan Approval Requirements				
Section 127.13	Extensions	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
*	*	*	*	*
Subchapter E—New Source Review				
Section 127.201	General requirements	5/19/07	5/14/12 [*Insert page number where the document begins*].	Paragraphs (d) through (f) added; paragraph(c) revised.
Section 127.201a	Measurements, abbreviations and acronyms.	5/19/07	5/14/12 [*Insert page number where the document begins*].	New.
Section 127.202	Effective Date	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.203	Facilities subject to special permit requirements.	5/19/07	5/14/12 [*Insert page number where the document begins*].	Paragraphs (a) through (f) revised.
Section 127.203a	Applicability determination	5/19/07	5/14/12 [*Insert page number where the document begins*].	New.
Section 127.204	Emissions subject to this chapter	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.205	Special permit requirements	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.206	ERC general requirements	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.207	Creditable emissions decrease or ERC generation and creation.	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.208	ERC use and transfer requirements.	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.209	ERC registry system	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.210	Offset ratios	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.212	Portable facilities	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.213	Construction and demolition	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.215	Reactivation	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
*	*	*	*	*
Section 127.217	Clean Air Act Titles III–V applicability.	5/19/07	5/14/12 [*Insert page number where the document begins*].	Revised.
Section 127.218	PALs	5/19/07	5/14/12 [*Insert page number where the document begins*].	New.

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
*	*	*	*	*

* * * * *

[FR Doc. 2012–11461 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0556; FRL-9669–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ohio; Determination of Clean Data for the 2006 24-Hour Fine Particulate Standard for the Steubenville-Weirton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a final determination regarding the two-state Steubenville-Weirton, Ohio-West Virginia nonattainment area (hereafter referred to as the ''Steubenville-Weirton Area'' or ''Area'') for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). EPA is determining that the Steubenville-Weirton Area has attained the 24-hour 2006 $PM_{2.5}$ NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 24-hour 2006 $PM_{2.5}$ NAAQS based on the 2008–2010 data. EPA's determination suspends the obligation of Ohio and West Virginia to submit, with respect to this area, attainment demonstrations, associated reasonably available control measures (RACM), reasonable further progress plans, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 2006 $PM_{2.5}$ standard for so long as the Area continues to meet the 24-hour 2006 $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on June 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0556. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: In Region III, Asrah Khadr, Office of Air Program Planning, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2023. The telephone number is (215) 814–2071. Ms. Khadr can also be reached via electronic mail at *khadr.asrah@epa.gov.* In Region V, Carolyn Persoon, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. Ms. Persoon's telephone number is (312) 353–8290. Ms. Persoon can also be reached via electronic mail at *persoon.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. Summary of Public Comment and EPA Response
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is making a final determination that the Steubenville-Weirton Area has attained the 24-hour 2006 $PM_{2.5}$ NAAQS. This determination is based upon complete, quality assured, and certified ambient air monitoring data showing that this area has monitored attainment of the 2006 $PM_{2.5}$ NAAQS based on data for 2008–2010.

On October 4, 2011 (76 FR 61291), EPA proposed its determination of attainment for the Steubenville-Weirton Area. A discussion of the rationale behind this determination and the effect of the determination were included in the notice of proposed rulemaking (NPR). One adverse comment was submitted in response to EPA's October 4, 2011 NPR (76 FR 61291). A summary of the comment and EPA's response is provided in section III of this document.

II. What is the effect of this action?

Under the provisions of EPA's $PM_{2.5}$ implementation rule (40 CFR 51.1004(c)), the requirements for the States of Ohio and West Virginia to submit, for the Steubenville-Weirton Area, an attainment demonstration and associated RACM (including reasonably available control technology (RACT)), a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the 2006 $PM_{2.5}$ NAAQS are suspended for so long as the Area continues to meet the 24-hour 2006 $PM_{2.5}$ NAAQS. If EPA subsequently determines that this Area violates the 24-hour 2006 $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist and this area would thereafter have to address the pertinent requirements.

This action, does not constitute a redesignation of the Steubenville-Weirton Area to attainment of the 24-hour 2006 $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it find that the Area has met all other requirements for redesignation. Even after a determination of attainment by EPA, the designation status of the Steubenville-Weirton Area remains nonattainment for the 24-hour 2006 $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Steubenville-Weirton Area.

III. Summary of Public Comment and EPA Response

Comment: An Ohio resident expressed concern for the air quality in the Steubenville-Weirton Area. The resident perceives the air quality to be poor and thus questioned how this Area will be free from requirements to create plans for air quality improvement. The resident also proposed that areas with air quality problems should be subject to more stringent standards.

Response: Since 2006, the States of Ohio and West Virginia, as well as the Federal government, have implemented various measures that have resulted in cleaner air in the Steubenville-Weirton Area, including, the nitrogen oxides (NO_X) SIP Call which addressed pollutants that can result in acid rain; mobile source engine standards leading to a decrease in NO_X and direct $PM_{2.5}$; fuel standards decreasing sulfur dioxide (SO_2); as well as rules affecting SO_2 and

NO_X from power plants. These and other measures have resulted in a decrease in monitored $PM_{2.5}$ concentrations in the Steubenville-Weirton Area. Questions regarding the stringency of existing air standards are not relevant to this determination. The sole concern of this determination is whether the Area has attained the 2006 $PM_{2.5}$ 24-hour standard. Since 2008, based on complete, quality assured and certified data, this Area has monitored attainment of that standard, set by EPA to protect human health and the environment. The Area continues to attain the standard. At this time, therefore, no additional attainment planning or measures related to attainment of the 2006 $PM_{2.5}$ 24-hour standard are needed. In the future, should EPA determine that a violation of the standard occurs, the States of Ohio and West Virginia will then be required to submit an attainment demonstration, associated RACM, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action merely makes an attainment determination based on air quality data and does not impose any additional requirements. 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.

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 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).

C. 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 July 13, 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 clean data determination for the 24-hour 2006 $PM_{2.5}$ NAAQS for the Steubenville-Weirton Area 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, Particulate matter, Sulfur oxides, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: February 15, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

Dated: April 18, 2012.

Susan Hedman,

Regional Administrator, Region V.

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 KK—Ohio

■ 2. In § 52.1880, paragraph (r) is added to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(r) Determination of Attainment. EPA has determined, as of *May 14, 2012,* that based on 2008 to 2010 ambient air quality data, the Steubenville-Weirton nonattainment area has attained the 24-hour 2006 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 24-hour 2006 $PM_{2.5}$ NAAQS.

Subpart XX—West Virginia

■ 3. In § 52.2526, paragraph (g) is added to read as follows:

§ 52.2526 Control strategy: Particulate matter.

* * * * *

(g) Determination of Attainment. EPA has determined, as of *May 14, 2012,* that based on 2008 to 2010 ambient air quality data, the Steubenville-Weirton nonattainment area has attained the 24-hour 2006 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area

continues to meet the 24-hour 2006 $PM_{2.5}$ NAAQS.

[FR Doc. 2012–11184 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0039; FRL–9344–2]

Acetone; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acetone (67–64–1) when used as an inert ingredient as a solvent or co-solvent, 40 CFR 180.930, in pesticides products applied to animals. Whitmire Micro-Gen (now affiliated with BASF Corp.; 3568 Tree Court Industrial Blvd., St. Louis, MO 63112) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acetone.

DATES: This regulation is effective May 14, 2012. Objections and requests for hearings must be received on or before July 13, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0039. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mark Dow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5533; email address: *dow.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0039 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 13, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2008–0039, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of February 6, 2008 (73 FR 6966) (FRL–8350–9), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 7E7239) by Whitmire Micro-Gen (now affiliated with BASF Corp.; 3568 Tree Court Industrial Blvd., St. Louis, MO 63112). The petition requested that 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of acetone (Cas Reg. No. 67–64–1) when used as an inert ingredient as a solvent or co-solvent in pesticide formulations applied to animals. That notice referenced a summary of the petition prepared by Whitmire Micro-Gen (now affiliated with BASF Corp.; 3568 Tree Court Industrial Blvd., St. Louis, MO 63112), the petitioner, which is available in the docket, *http://*

www.regulations.gov. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit V.C.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

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

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acetone including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with acetone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by acetone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The toxicity data base for acetone includes data relative to acetone per se as well as to isopropanol. Since isopropanol readily metabolizes to acetone in the body, the Agency has concluded that the data regarding isopropanol may be used in conjunction with the data regarding acetone to characterize the toxicity of acetone.

Acetone has low acute toxicity. It is not a skin irritant or sensitizer but is a defatting agent to the skin. Acetone is an eye irritant.

The toxicity of acetone was evaluated in several subchronic toxicity studies in mice and rats via drinking water, gavage and inhalation. The most notable findings in subchronic studies were increased liver and kidney weights, and decreased spleen weights. In mice administered acetone via drinking water, adverse effects (liver and kidney toxicity) were observed at doses ≥1,600 milligrams/kilogram/bodyweight/day (mg/kg/bw/day). Rats treated with acetone via gavage for 90 days exhibited decreased body weight and increased relative kidney and liver weights, hemosiderosis of the spleen and an increased incidence and severity of nephropathy at 1,700 mg/kg/day. The NOAEL in rats was 900 mg/kg/day. In a subchronic toxicity study in rats via gavage, acetone resulted in kidney weight changes and lesions at 500 mg/kg/day. The NOAEL in this study was 100 mg/kg/day. Male Sprague-Dawley rats were exposed to acetone via inhalation at a concentration of 19,000 ppm (45,106 mg/m^3) for 3 hours/day, 5 days/week, for 8 weeks. Groups were sacrificed after 2, 4, and 8 weeks and 2 weeks post-exposure. No treatment related effects were observed in this study at exposure concentrations of 19,000 ppm (equal to 11,703 mg/kg/day). No dermal toxicity studies were available.

Acetone was evaluated in a reproduction screening test with mice via gavage at a dose of 3,500 mg/kg/day and controls receiving no test compound. Toxicity was manifested as decreased reproductive index, increased gestation length, reduced birth weights, decreased neonatal survival and increased neonatal weight gain at 3,500 mg/kg/day. In a 2-generation reproduction study conducted in rats with isopropanol, the maternal NOAEL was 500 mg/kg/day based on increased in liver and kidney weights (absolute and relative) seen at the LOAEL of 1,000 mg/kg/day. The offspring toxicity NOAEL was 500 mg/kg/day based on reduced pup body weights and a slight increase in pup mortality seen at the LOAEL of 1,000 mg/kg/day. No reproductive parameters were altered at doses up to 1,000 mg/kg/day. Two developmental toxicity studies in rodents exposed to acetone via the inhalation route of exposure were also available for review. In mice, maternal (increased incidence of late resorptions) and fetal (reduced weight) toxicities were observed at the same dose, 6,600 ppm (approximately 4,066 mg/kg/day). No teratogenic effects were observed in mice. The NOAEL was 2,200 ppm (equivalent to 1,348 mg/kg/day). In rats, maternal (reduction in body weight, uterine weight and extra-gestational weight gain) and fetal (malformations) toxicities were observed at the same dose, 11,000 ppm (approximately 6,773 mg/kg/day). The NOAEL was 2,200 ppm (equivalent to 1,348 mg/kg/day). In a developmental toxicity study in rats via gavage with isopropanol, the NOAELs for maternal and developmental toxicities were 400 mg/kg/day based on

slightly increased mortality at 800 mg/kg/day and reduced gestational body weight and reduced gravid uterine weights at 1,200 mg/kg/day. Reduced fetal body weights were observed at 800 and 1,200 mg/kg/day. There was also a developmental toxicity study in rabbits treated with isopropanol via gavage. Maternal toxicity was manifested as reduced body weight and food consumption at 480 mg/kg/day. The NOAEL was 240 mg/kg/day. There were no treatment related effects observed in fetuses up to the highest dose tested (480 mg/kg/day). In a developmental neurotoxicity study in rats with isopropanol, no developmental neurotoxicity was observed at doses up to 1,200 mg/kg/day.

Subchronic neurotoxicity studies were available in rats administered acetone via the inhalation or dietary routes of exposure. Repeated daily exposures up to 14,240 mg/m^3 of acetone produced an inhibition of avoidance behavior but did not produce any signs of motor imbalance. Following acetone administered via inhalation, rats exhibited transient ataxia at >28,480 ppm (approximately 17,544 mg/kg/day). When acetone was administered in the diet for 14 weeks, neurotoxicity was not observed at concentrations up to 1.0% (approximately 5,000 mg/kg/day).

Information on the carcinogenicity of acetone is available from dermal studies performed with acetone used as a vehicle. An increased incidence of tumor formation was not observed up to 0.2 milliliter (ml) of acetone in mice. Carcinogenicity studies in rodents administered isopropanol via inhalation, did not exhibit an increased incidence of tumor formation up to 5,000 ppm (approximately 3,086 mg/kg/day).

Acetone is normally eliminated mainly by enzymatic metabolism (70–80% of the total body burden) or excreted via urine or exhaled following inhalation exposure (human volunteer study). The first step includes the oxidation to acetol by acetone monooxygenase, associated with cytochrome P450IIE1. This step is followed by two different pathways that both lead to the formation of pyruvate which—as a key product of intermediary metabolism—can enter various pathways, e.g. gluconeogenesis or the citric acid cycle. Acetone is excreted mainly via the lung both unchanged and, following metabolism, as carbon dioxide.

Specific information on the studies received and the nature of the adverse effects caused by acetone as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Acetone—Decision Document for Pesticide Petition 7E7239, Acetone, CAS No. 67–64–1; PC Code 844101'', in docket ID number EPA–HQ–OPP–2008–0039.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

Acetone is currently permitted for use as an inert ingredient in pesticide formulations applied pre and post harvest under 40 CFR 180.910. Acetone occurs or is found in a variety of foods and consumer products. Acetone has been approved by FDA as a secondary direct food additive (21 CFR 173.210). The available toxicity studies indicate that acetone has very low toxicity. The NOAELs were 900 mg/kg/day and above except one 90-day toxicity study in rats via gavage in which the NOAEL of 100 mg/kg/day was based on kidney toxicity seen at the LOAEL of 500 mg/kg/day. Differences in the observed effect level between the drinking water/dietary study and the gavage study may relate to the metabolism of acetone. EPA's Integrated Risk Information System (IRIS) concluded that the drinking water route is considered to more closely mimic potential long-term human exposure scenarios. For this reason, EPA concluded that the results of gavage study in the case of acetone may not be appropriate for the long term risk assessments. As indicated in this Unit, the lowest NOAEL identified in the database is 900 mg/kg/bw/day. For all practical purposes, that is the Agency's identified limit dose. For materials that show no signs of toxicity at or above the limit dose, quantitative risk assessment is not necessary. Since no endpoint of concern was identified for the acute and chronic dietary exposure assessment and short and intermediate dermal and inhalation exposure, a quantitative risk assessment for acetone is not necessary.

C. Exposure Assessment

No hazard endpoint of concern was identified for the acute and chronic dietary assessment (food and drinking water), or for the short, intermediate, and long term dermal and inhalation residential assessments, therefore, acute and chronic dietary and short-, intermediate-,and long-term dermal and inhalation residential exposure assessments are not necessary.

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

EPA has not found acetone to share a common mechanism of toxicity with any other substances, and acetone does not appear to produce a toxic metabolite produced by other substances, however, isopropanol is readily metabolized to acetone in humans. For both isopropanol and its metabolite, acetone, no endpoint of concerns were identified for various dietary and non-dietary exposure scenarios. For the purposes of this tolerance action, therefore, EPA has assumed that acetone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

In general. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the

completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The toxicity database is sufficient for acetone and potential exposure is adequately characterized given the low toxicity of the chemical. In terms of hazard, there are no concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity. The lowest NOAEL identified in the database for risk assessment is 900 mg/kg/day. No evidence of increased susceptibility was observed in the available reproduction studies, developmental studies and developmental neurotoxicity study (isopropanol). In these studies developmental toxicity was observed in the presence maternal toxicity and at or above the limit dose of 1,000 mg/kg/day. Therefore, a safety factor analysis has not been used to assess risk. Accordingly, there is no reason to apply an additional safety factor to protect infants and children.

E. Aggregate Risks and Determination of Safety

Given the lack of concern for hazard posed by acetone, EPA concludes that there are no dietary or aggregate dietary/non-dietary risks of concern as a result of exposure to acetone in food and water or from residential exposure. As discussed in this unit, EPA expects aggregate exposure to acetone to pose no appreciable dietary risk given that the data show a lack of systemic toxicity at doses ≥900 mg/kg/day and a lack of any increased susceptibility of infants and children. Taking into consideration of all available information on acetone, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to acetone residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

The Codex has not established a MRL for acetone.

C. Response to Comments

The Agency received one comment from a private citizen who opposed the proposed exemption. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the FFDCA, EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.930 for acetone (67–64–1) when used as an inert ingredient (as solvent or co-solvent) in pesticide formulations applied to animals.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirements of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will

submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
Acetone (Cas Reg. No. 67–64–1)		solvent or cosolvent.
* * * * *	*	*

[FR Doc. 2012–11623 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0421; FRL–9346–7]

Fluxapyroxad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluxapyroxad in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 14, 2012. Objections and requests for hearings must be received on or before July 13, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0421. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9369; email address: *odiott.olga@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the OCSPP test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0421 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 13, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0421, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 23, 2010 (75 FR 35803) (FRL–8831–3), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7709) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide fluxapyroxad, 3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide, in or on multiple commodities. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing. Based on EPA's review of the data supporting the petition, BASF Company revised their petition (PP 0F7709) by:

1. Proposing tolerances for corn, pop, grain; corn, sweet kernels plus cobs with husks removed; and wheat, grain;

2. Decreasing or increasing the proposed tolerances for various commodities;

3. Deleting the proposed tolerance for vegetable, root, subgroup 1A and proposing a tolerance for beet, sugar; and

4. Proposing a tolerance for oilseeds, group 20.

The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluxapyroxad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluxapyroxad follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fluxapyroxad is of low acute toxicity by the oral, dermal and inhalation routes, is not irritating to the eyes and skin, and is not a dermal sensitizer. The primary target organ for fluxapyroxad exposure via the oral route is the liver with secondary toxicity in the thyroid for rats only. Liver toxicity was observed in rats, mice, and dogs, with rats as the most sensitive species for all durations of exposure. In rats, adaptive effects of hepatocellular hypertrophy and increased liver weights and changes in liver enzyme activities were first observed. As the dose or duration of exposure to fluxapyroxad increased, clinical chemistry changes related to liver function also occurred, followed by hepatocellular necrosis, neoplastic changes in the liver, and tumors. Thyroid effects were observed only in rats. These effects were secondary to changes in liver enzyme regulation, which increased metabolism of thyroid hormone, resulting changes in thyroid hormones, thyroid follicular hypertrophy and hyperplasia, and thyroid tumor formation. Tumors were not observed in species other than rats or in organs other than the liver and thyroid.

In accordance with the EPA's Final Guidelines for Carcinogen Risk Assessment (March, 2005), fluxapyroxad is classified as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range:

• No treatment-related tumors were seen in male or female mice when tested at doses that were adequate to assess carcinogenicity (including the Limit Dose);

• Treatment-related liver tumors were seen in male rats at doses ≥250 parts per million (ppm) (11 milligrams/kilogram/day (mg/kg/day)) and in female rats at doses ≥1,500 ppm (82 mg/kg/day);

• Treatment-related thyroid follicular cell tumors were seen in male rats only at doses ≥1,500 ppm (68 mg/kg/day);

• There is no mutagenicity concern from *in vivo* or *in vitro* assays;

• The hypothesized mode of action (i.e., a non-genotoxic) for each tumor type (i.e., the liver and thyroid) was supported by adequate studies that clearly identified the sequence of key events, dose-response concordance and temporal relationship to the tumor types. The mode of action met the criteria established by the Agency.

The Agency has determined that the chronic population adjusted dose (cPAD) will adequately account for all chronic effects, including carcinogenicity, that could result from exposure to fluxapyroxad.

No evidence of neurotoxicity was observed in response to repeated administration of fluxapyroxad. An acute neurotoxicity study showed decreased rearing and motor activity. This occurred on the day of dosing only and in the absence of histopathological effects or alterations in brain weights.

This indicated that any neurotoxic effects of fluxapyroxad are likely to be transient and reversible due to alterations in neuropharmacology and not from neuronal damage. There were no neurotoxic effects observed in the subchronic dietary toxicity study. No evidence of reproductive toxicity was observed. Developmental effects observed in both rats and mice (thyroid follicular hypertrophy and hyperplasia in rats and decreased defecation, food consumption, body weight/body weight gain, and increased litter loss in rabbits) occurred at the same doses as those that caused adverse effects in maternal animals, indicating no quantitative susceptibility. Since the maternal toxicities of thyroid hormone perturbation in rats and systemic toxicity in rabbits likely contributed to the observed developmental effects there is low concern for qualitative susceptibility. An immunotoxicity study in mice showed no evidence of immunotoxic effects from fluxapyroxad.

Subchronic oral toxicity studies in rats, developmental toxicity studies in rabbits, and *in vitro* and *in vivo* genotoxicity studies were performed for fluxapyroxad metabolites F700F001, M700F002, and M700F048. Like fluxapyroxad, no genotoxic effects were observed for any of these metabolites. All three metabolites displayed lower subchronic toxicity via the oral route than fluxapyroxad, with evidence of non-specific toxicity (decreased body weight) observed only for M700F0048 at the limit dose. Only M700F0048 exhibited developmental toxicity at doses similar to those that caused developmental effects in rabbits with fluxapyroxad treatment. However, these effects (abortions and resorptions) were of a different nature than for fluxapyroxad (paw hyperflexion) and are considered secondary to maternal toxicity. The Agency considers these studies sufficient for hazard identification and characterization and concludes that these metabolites do not have hazards that exceed those of fluxapyroxad in nature, severity, or potency.

Specific information on the studies received and the nature of the adverse effects caused by fluxapyroxad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fluxapyroxad: Human Health Risk Assessment for Use of New Active Ingredient on Cereal Grains, Legume Vegetables (Succulent and Dry), Oil Seed Crops (Canola and Sunflower), Peanuts, Pome Fruit, Stone Fruit, Root and Tuber Vegetables (Potatoes and Sugar Beets), Fruiting Vegetables, and Cotton,'' at page 39 in docket ID number EPA–HQ–OPP–2010–0421–0005.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fluxapyroxad used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUXAPYROXAD FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children, and Females 13–49 years of age).	NOAEL = 125 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	aRfD = 1.25 mg/kg/day. aPAD = 1.25 mg/kg/day	Acute neurotoxicity study in rats. LOAEL = 500 mg/kg/day based on decreased motor activity (both sexes) and decreased rearing (males only)
Chronic dietary (All populations).	NOAEL= 2.1 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = 0.021 mg/kg/day.. cPAD = 0.021 mg/kg/day	Chronic toxicity/carcinogenicity study in rats. LOAEL = 11 mg/kg/day based on non-neoplastic changes in the liver (foci, masses)
Cancer (Oral, dermal, inhalation).	Classification: Not likely to be carcinogenic to humans at doses sufficient to induce liver and/or thyroid tumors. Quantification of risk using a non-linear approach (i.e., RfD) will adequately account for all chronic toxicity, including carcinogenicity.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluxapyroxad, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from fluxapyroxad in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fluxapyroxad. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, tolerance level residues adjusted to account for metabolites of concern, 100 percent crop treated (PCT) assumptions, and Dietary Exposure Evaluation Model (DEEM) default and empirical processing factors were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, a moderately refined chronic dietary exposure analysis was performed. An assumption of 100 PCT, and DEEM default and empirical processing factors were used for the chronic dietary analysis. Highest average field trial (HAFT) residues for parent plus metabolite were used for all plant commodities. For livestock commodities, tolerance level residues adjusted to account for metabolites of concern were used.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to fluxapyroxad. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the acute dietary assessment for fluxapyroxad. Tolerance level residues and 100 PCT information were assumed for all food commodities. For the chronic dietary assessment tolerance level residues and 100 PCT information were assumed for livestock commodities. HAFT residues for parent plus metabolite were used for all plant commodities.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluxapyroxad in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluxapyroxad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), and the Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fluxapyroxad for acute exposures are estimated to be 14.1 parts per billion (ppb) for surface water and 0.087 ppb for ground water. For chronic exposures the EDWCs are estimated to be 6.7 ppb for surface water and 0.087 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The EDWCs of 14.1 ppb for surface water and 0.087 ppb for ground water were used for the acute and the chronic dietary assessments, respectively.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluxapyroxad is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of quantitative susceptibility was observed in a reproductive and developmental toxicity study in rats or in developmental toxicity studies in rats and rabbits. Developmental toxicity data in rats showed decreased body weight and body weight gain in the offspring at the same dose levels that caused thyroid follicular hypertrophy/hyperplasia in parental animals. Effects in rabbits were limited to paw hyperflexion, a malformation that is not considered to result from a single exposure and that usually reverses as the animal matures. Developmental effects observed in both rats and rabbits occurred at the same doses as those that caused adverse effects in maternal animals, indicating

no quantitative susceptibility. The Agency has low concern for developmental toxicity because the observed effects were of low severity, were likely secondary to maternal toxicity, and demonstrated clear NOAELs. Further, the NOAELs for these effects were at dose levels higher than the points of departure selected for risk assessment for repeat-exposure scenarios. Therefore, based on the available data and the selection of risk assessment endpoints that are protective of developmental effects, there are no residual uncertainties with regard to prenatal and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluxapyroxad is complete.

ii. There is no indication that fluxapyroxad is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Neither the acute or the subchronic neurotoxicity studies indicated specific neurotoxicity responses to fluxapyroxad. Because fluxapyroxad can disrupt thyroid hormone levels, the Agency considered the potential for fluxapyroxad to cause developmental neurotoxicity as a result of thyroid hormone disruption, which is more sensitive endpoint than the endpoints used in a developmental neurotoxicity study. Based on its evaluation of thyroid hormone data submitted for fluxapyroxad and the ontogeny of thyroid hormone metabolism, the Agency has determined that adverse thyroid hormone disruptions in the young are unlikely to occur at dose levels as low as the points of departure chosen for risk assessment. The Agency has low concern for neurotoxic effects of fluxapyroxad at any life stage.

iii. Based on the developmental and reproductive toxicity studies discussed in Unit III.D.2., there are no residual uncertainties with regard to prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues or field trial residue data. The dietary risk assessment is based on reliable data, is conservative and will not underestimate dietary exposure to fluxapyroxad. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluxapyroxad in drinking water. These assessments will not underestimate the exposure and risks posed by fluxapyroxad.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluxapyroxad will occupy 6% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluxapyroxad from food and water will utilize 48% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for fluxapyroxad.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluxapyroxad is not registered for any use patterns that would result in short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluxapyroxad is not registered for any use patterns that would result in intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD.

5. *Aggregate cancer risk for U.S. population.* In accordance with the EPA's Final Guidelines for Carcinogen Risk Assessment (March 2005), EPA classified fluxapyroxad as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. The Agency has determined that the quantification of risk using the cPAD for fluxapyroxad will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to fluxapyroxad. As noted above, chronic exposure to fluxapyroxad from food and water will utilize 48% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluxapyroxad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

A Liquid Chromatography-Mass Spectrometer/Mass Spectrometer (LC/MS/MS) method is available as an enforcement method. This method uses reversed-phase High Pressure Liquid Chromatography (HPLC) with gradient elution, and includes 2 ion transitions to be monitored for the parent and the metabolites M700F008 and M700F048, so the method also serves as the confirmatory method.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established MRLs for fluxapyroxad.

C. Revisions to Petitioned-For Tolerances

Based on EPA's review, BASF Company revised their petition (PP 0F7709) by:

1. Proposing tolerances for corn, pop, grain; corn, sweet kernels plus cobs with husks removed; and wheat, grain. Tolerances for these commodities were originally proposed as part of the respective crop group tolerances, but the Agency determined that separate tolerances are needed because of differences between the needed tolerances and the proposed crop group tolerances.

2. Decreasing or increasing the proposed tolerances for various commodities.

3. Deleting the proposed tolerance for vegetable, root, subgroup 1A and proposing a tolerance for beet, sugar. The submitted data are not sufficient to support a tolerance for the proposed subgroup 1A, but it supports a tolerance for beet, sugar.

4. Deleting tolerances that the Agency determined are not needed and/or are covered by other proposed tolerances.

5. Proposing a tolerance for oilseeds, group 20. The registrant had proposed tolerances for all the representative commodities for crop group 20 and the submitted data supports establishment of the group tolerance.

The Agency concluded that based on the residue data these changes are required to support the proposed uses. The Agency analyzed the field trial data for the respective commodities using the Organization for Economic Cooperation and Development tolerance calculation procedures to determine the appropriate tolerances.

V. Conclusion

Therefore, tolerances are established for residues of fluxapyroxad, 3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide, as requested in the revised petition.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 2, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.666 to subpart C to read as follows:

§ 180.666 Fluxapyroxad; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide fluxapyroxad, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fluxapyroxad, 3-(difluoromethyl)-1-methyl-*N*-(3′,4′,5′-trifluoro[1,1′-biphenyl]-2-yl)-1*H*-pyrazole-4-carboxamide in or on the commodity.

Commodity	Parts per million
Apple, wet pomace	2.0
Beet, sugar	0.1
Beet, sugar, dried pulp	0.1
Beet, sugar, tops	7.0
Cattle, fat	0.05
Cattle, meat	0.01
Cattle, meat byproducts	0.03
Corn, field, grain	0.01
Corn, oil	0.03
Corn, pop, grain	0.01
Corn, sweet, kernels plus cobs with husks removed	0.15
Cotton, gin byproducts	0.01
Cotton, undelinted seed	0.01
Egg	0.002
Fruit, pome, group 11	0.8
Fruit, stone, group 12	2.0
Goat, fat	0.05

Commodity	Parts per million
Goat, meat	0.01
Goat, meat byproducts	0.03
Grain, aspirated fractions	20.0
Grain, cereal, group 15, (except corn, field, grain; except corn, pop, grain; except corn, kernels plus cobs with husks removed; except wheat)	3.0
Grain, cereal, forage, fodder and straw, group 16	20
Horse, fat	0.05
Horse, meat	0.01
Horse, meat byproducts	0.03
Milk	0.005
Oilseeds, group 20	0.9
Pea and bean, dried shelled except soybean, subgroup 6C	0.4
Pea and bean, succulent shelled, subgroup 6B	0.5
Peanut	0.01
Peanut, refined oil	0.02
Plum, prune	3.0
Potato, wet peel	0.1
Rice, bran	4.5
Rice, hulls	8.0
Sheep, fat	0.05
Sheep, meat	0.01
Sheep, meat byproducts	0.03
Soybean, hulls	0.3
Soybean, seed	0.15
Vegetable, foliage of legume, group 7	30
Vegetables, fruiting, group 8	0.7
Vegetable, legume, edible podded, subgroup 6A	2.0
Vegetable, tuberous and corm, subgroup 1C	0.02
Wheat, bran	0.6
Wheat, grain	0.3

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–11602 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0425; FRL–9341–8]

Penflufen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of penflufen in or on multiple commodities which are identified and discussed later in this document. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 14, 2012. Objections and requests for hearings must be received on or before July 13, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0425. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marianne Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8043; email address: *lewis.marianne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the OCSPP test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0425 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 13, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0425, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr. Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 8, 2010 (75 FR 54631) (FRL–8843–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7711) by Bayer CropScience, 2 T.W. Alexander Drive P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the penflufen, *N*-[2-(1,3-dimethylbutyl)phenyl]-5-fluoro-1,3-dimethyl-1*H*-pyrazole-4-carboxamide, in or on alfalfa, forage; alfalfa, hay; vegetable, tuberous and corm, subgroup 1C; vegetable, legume, group 6; vegetable, foliage of legume, group 7; grain, cereal, group 15, grain, cereal, forage, fodder and straw, group 16; oilseed, group 19; cotton, gin by-products at 0.01 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has made some minor modifications to some commodity definitions for consistency with EPA naming-conventions for those commodities. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for penflufen including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with penflufen follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Penflufen is an alkylamide fungicide belonging to the chemical class of carboxamides. The reported pesticidal mode of action is as an inhibitor of mitochondrial respiration by inhibiting succinate dehydrogenase, an enzyme in the electron transport system.

The liver and thyroid are target organs for penflufen. Increased liver weight, alterations in clinical chemistry parameters relevant to effects on the liver, and an increase in the incidence of hepatocellular hypertrophy were consistent findings across species and duration of exposure (28-day, 90-day, and 1- to 2-year exposure periods). The hepatic total cytochrome P–450 content, and benzoxyresorufin (BROD) and pentoxyresorufin (PROD) enzyme activities, were shown to be increased in rats of both sexes following subchronic oral exposure. Additionally, increased incidence of thyroid follicular cell hypertrophy/hyperplasia was observed across studies and species (no data provided on thyroid hormone levels). The liver and thyroid findings were mostly reversible after a 3-month recovery period in the rat. In the rat and mouse, following 104 week/78 week exposure periods at dose levels up to and/or greater than the limit dose, there was no increase in the incidence of liver or thyroid tumors.

Reproductive toxicity was observed in the 2-generation reproduction study in rats. Delayed sexual maturation was observed in females in both generations, and magnitude of the associated decline in body weight was not considered to be a factor in the delay in sexual maturation. Developmental toxicity was not observed in the rat or rabbit, although the dose levels in both studies were not considered adequate to assess developmental toxicity potential of penflufen. However, there is little concern that new studies would identify a developmental endpoint with a no-observed-adverse-effect-level (NOAEL) lower than the NOAEL selected for risk assessment.

Decreased motor/locomotor activity was observed in both sexes of rats following acute and in female rats following subchronic oral exposure, although neuropathological lesions were not observed in either study.

There are no mutagenicity concerns. Carcinogenicity studies with penflufen found a statistically significant increase in histiocytic sarcomas in male rats; a marginal increase in brain astrocytomas, a fatal tumor, in male rats at the high dose; and ovarian adenomas in female rats at the high dose. Although these three tumors were considered treatment-related, they provided weak evidence of carcinogenicity due to the marginal nature of the tumor responses. There was no evidence of carcinogenicity in male or female mice. Given the weak evidence indicating any potential for carcinogenicity, EPA has determined that quantification of risk using a non-linear approach reference dose (i.e., RfD) will adequately account for all chronic toxicity, including carcinogenicity, which could result from exposure to penflufen. The NOAEL (38 milligram/kilogram/day (mg/kg/day)) used for establishing the Chronic RfD is approximately 10-fold lower than the dose (approximately 300 mg/kg/day) that induced a marginal tumor response. The EPA has determined that the chronic population adjusted dose is protective of all long-term effects, including potential carcinogenicity.

Specific information on the studies received and the nature of the adverse effects caused by penflufen as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Penflufen. Human Health Risk Assessment to Support New Uses on Potato (Crop Subgroup 1C), Legume Vegetables (Crop Group 6 and Crop Group 7), Cereal Grains (Crop Group 15 and Crop Group 16), Oilseeds (Crop Group 20), and Alfalfa'' in docket ID number EPA–HQ–OPP–2010–0425.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a RfD and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for penflufen used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PENFLUFEN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (all populations, including children and women 13–49 years of age).	NOAEL = 50 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day. aPAD = 0.5 mg/kg/day	Acute neurotoxicity study in rats. LOAEL = 100 mg/kg/day based on decreased motor and locomotor activity (39–81% on day of treatment) in females.
Chronic dietary (All populations)	NOAEL= 38 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.38 mg/kg/day. cPAD = 0.38 mg/kg/day	Chronic toxicity study in dogs. LOAEL = 357/425 mg/kg/day, based on decreased terminal body weight and body weight gain (females), increased prothrombin time (males), increased alkaline phosphate activity, decreased cholesterol, increased GGT levels, decreased albumin and albumin/globulin ratio, decreased calcium and phosphorus, increased liver weights, increased incidence of focal hepatocellular brown pigment and hepatocellular hypertrophy, and an increased incidence of thyroid follicular cell hypertrophy in both sexes, and in increased incidence of zona glomerulosa vacuolation of the adrenal gland in females.
Cancer (Oral, dermal, inhalation)	Quantification of risk using a non-linear approach (i.e., RfD) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to penflufen.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. Mg/kg/day = milligrams/kilograms/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to penflufen, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from penflufen in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for penflufen. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues, default dietary exposure evaluation model (DEEM) processing factors for dried potatoes and assumed 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EP used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues, default DEEM processing factors for dried potatoes and assumed 100 PCT for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues, default DEEM processing factors for dried potatoes and assumed 100 PCT for all commodities.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or non-linear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used based on an earlier non-cancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a non-linear RfD approach is appropriate for assessing cancer risk to penflufen. Cancer risk was assessed using the same

exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for penflufen. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for penflufen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of penflufen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of penflufen for acute exposures are estimated to be 11.4 parts per billion (ppb) for surface water and 16.6 ppb for ground water. The EDWC of penflufen for chronic exposures for non-cancer assessments are estimated to be 1.8 ppb for surface water and 16.6 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 16.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 16.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Penflufen is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the rat multi-generation reproduction study there was slight decrease in litter size, delayed sexual maturation, decreased body weight/gain, decreased brain, spleen, and thymus weights were noted in the offspring. At the same dose level the adults exhibited decreased body weight/gain, alteration in food consumption, decreased thymus weight, and decrease spleen weights. In the rat developmental toxicity study, the maternal findings (decreased body weight gain) at the highest dose tested (HDT) are considered minimal. No adverse effects were observed on the foetuses. In the rabbit developmental toxicity study, the maternal findings (decreased body weight gain) at the HDT are considered minimal. No adverse effects were observed at the HDT.

3. *Conclusion.* The Agency recommends that the 10X FQPA safety factor for the protection of infants and children, be reduced to 1X. The risk assessments conducted for penflufen were based on the most sensitive endpoints in the toxicity database, and the NOAELs selected for risk assessment are considered protective of potential developmental, neurotoxic, and immunotoxic effects for infants and children. Highly conservative exposure estimates were incorporated into the risk assessment for penflufen. There are no residual uncertainties with regard to pre- and/or postnatal toxicity or neurotoxicity, and exposure; therefore, reduction of the 10X FQPA safety factor for penflufen to 1X is appropriate based on the following findings:

i. The toxicity database for penflufen is complete for consideration of estimated risks for all populations of concern.

ii. Although decreased motor activity was observed following acute oral exposure, no neuropathological lesions were observed and there is little concern for neurotoxicity. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is some evidence of qualitative sensitivity of the young (delayed sexual maturation and decreased litter size), the effects are well characterized, and there is a clear NOAEL. The dose level where offspring effects were identified in the reproduction study is comparable to the high dose used in the rat developmental toxicity study where no effects were identified in either the maternal or fetal rat. Since minimal/no effects were observed in the developmental toxicity studies following exposure of the maternal animals to dose levels equal to and greater than those tested in the studies used for risk assessment, there is little concern that new studies would identify a developmental endpoint with a NOAEL lower than the NOAELs selected for risk assessment.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to penflufen in drinking water. These assessments will not underestimate the exposure and risks posed by penflufen.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. A highly conservative acute dietary exposure assessment demonstrated that penflufen does not pose an unacceptable aggregate risk.

2. *Chronic risk.* There are no residential uses for penflufen; therefore, the chronic aggregate risk assessment includes exposures from dietary consumption of food and water only. A highly conservative chronic aggregate dietary exposure assessment demonstrated that penflufen does not pose an unacceptable aggregate chronic risk.

3. *Short-term risk.* There are no residential uses of penflufen; therefore a short-term aggregate risk assessment was not conducted for this chemical.

4. *Intermediate-term risk.* There are no residential uses of penflufen; therefore an intermediate-term aggregate risk assessment was not conducted for this chemical.

5. *Aggregate cancer risk for U.S. population.* In a rat carcinogenicity study with penflufen a statistically significant increase in histiocytic sarcomas with a positive trend in male rats only (but in the absence of a dose response and lack of pre-neoplastic lesions) were seen. A marginal increase in brain astrocytomas was also observed in males at the high dose; however, this effect was not dose-related, did not reach statistical significance, and there was no overall trend. In addition, there were no pre-neoplastic lesions, such as glial proliferations, which are a good indicator of chemical tumor induction (*i.e.,* there will be changes in the cells prior to transformation to a neoplasm). The ovarian adenomas observed at the high dose also showed no dose response, no pair-wise significance, no decrease in latency, and there were no pre-neoplastic lesions such as hyperplasia of the epithelial cells of the endometrium. Additionally, there was no evidence of carcinogenicity in male or female mice (at doses that were judged to be adequate to assess the carcinogenic potential), no concern for mutagenicity (*in vivo* or *in vitro)* for the parent molecule or the two metabolites, and there were no other lines of evidence (such as structure-activity relationship). Although these three tumors were considered treatment-related, they provided weak evidence of carcinogenicity due to the marginal nature of the tumor responses and the other factors mentioned in this unit. Given the weak evidence indicating any potential for carcinogenicity, EPA has determined that quantification of risk using a non-linear approach (i.e., RfD) will adequately account for all chronic toxicity, including carcinogenicity, which could result from exposure to penflufen. The NOAEL (38 mg/kg/day) used for establishing the chronic RfD is approximately 10-fold lower than the dose (approximately 300 mg/kg/day) that induced a marginal tumor response. The EPA has determined that the chronic population adjusted dose is protective of all long-term effects, including potential carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to penflufen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method involves extraction of samples with acetonitrile/water, cleanup using solid phase extraction, and analysis of penflufen by liquid chromatography/mass spectrometry (LC/MS/MS) (EL–002–P09–03).

B. International Residue Limits

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

The Codex has not established a MRL for penflufen.

C. Revisions to Petitioned-For Tolerances

Some minor modifications to commodity definitions initially submitted were made to be consistent with the updated EPA naming-conventions for commodities.

V. Conclusion

Therefore, tolerances are established for residues of penflufen, in or on alfalfa, forage; alfalfa, hay; vegetable, tuberous and corm, subgroup 1C; vegetable, legume, group 6; vegetable, foliage of legume, group 7; grain, cereal, group 15, grain, cereal, forage, fodder and straw, group 16; oilseed, group 19; cotton, gin by-products at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian

tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 3, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.664 is added to subpart C to read as follows:

§ 180.664 Penflufen; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide penflufen, including its metabolites and degradates, in or on the following commodities listed in the table. Compliance with the tolerance levels specified in the table is to be determined by measuring only penflufen *N*-[2-(1,3-dimethylbutyl)phenyl]-5-fluoro-1,3-dimethyl-1*H*-pyrazole-4-carboxamide, in or on the following commodities.

Commodity	Parts per million
Alfalfa, forage	0.01
Alfalfa, hay	0.01
Cotton, gin by-products	0.01
Grain cereal, forage, fodder and straw, group 16	0.01
Grain, cereal, group 15	0.01
Oilseed, group 20	0.01
Vegetable, foliage of legume, group 7	0.01
Vegetable, legume, group 6	0.01
Vegetable, tuberous and corm subgroup 1C	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–11629 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2005–0033; FRL–9350–2]

RIN 2070–AD16

Withdrawal of Revocation of TSCA Section 4 Testing Requirements for One High Production Volume Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In the **Federal Register** issue of March 16, 2012, EPA published a direct final rule revoking certain testing requirements promulgated under the Toxic Substances Control Act (TSCA) for 10 chemical substances, including benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]- (CAS No. 1324–76–1), also known as C.I. Pigment Blue 61. EPA received an adverse comment regarding C.I. Pigment Blue 61. This document withdraws the revocation of testing requirements for C.I. Pigment Blue 61 as described in the March 16, 2012 direct final rule. In withdrawing the revocation, this document also restores the original testing requirements as currently shown in the Code of Federal Regulations (CFR). Elsewhere in today's **Federal Register**, EPA is publishing a proposed rule revoking the same testing requirements for C.I. Pigment Blue 61 that were published in the March 16, 2012 direct final rule.

DATES: This final rule is effective May 15, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; email address: *roman.catherine@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?

A list of potentially affected entities is provided in the **Federal Register** issue of March 16, 2012 (77 FR 15609) (FRL–9335–6). 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 rule is being withdrawn?

In the March 16, 2012 **Federal Register**, EPA issued a revocation of some or all of the TSCA section 4 testing requirements for 10 chemical substances by direct final rule. In accordance with the procedures described in the March 16, 2012 **Federal Register** document, EPA is withdrawing the revocation of certain testing requirements for C.I. Pigment Blue 61 and also restoring the original testing requirements found in the CFR, because the Agency received an adverse comment concerning this chemical substance. The final rule revoking testing requirements for the other 9 chemical substances described in the March 16, 2012 **Federal Register** document is otherwise unaffected by the withdrawal of the revocation for C.I. Pigment Blue 61. Elsewhere in today's **Federal Register**, EPA is proposing a rule to revoke certain test rule requirements for C.I. Pigment Blue 61.

The docket identification (ID) number for the test rule concerning this chemical substance was established at EPA–HQ–OPPT–2005–0033. That docket includes information considered by the Agency in developing those rules and the adverse comment.

III. How do I access the docket?

To access the docket, please go to *http://www.regulations.gov* and follow the online instructions using the docket ID number EPA–HQ–OPPT–2005–0033. Additional information about the Docket Facility is also provided under **ADDRESSES** in the March 16, 2012 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 799

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

Dated: May 8, 2012.

James J. Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 799—[AMENDED]

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 2. In § 799.5085, revise the entry ''CAS No. 1324–76–1'' in Table 2 of paragraph (j) to read as follows:

§ 799.5085 Chemical testing requirements for first group of high production volume chemicals (HPV1).

* * * * *

(j) * * *

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CAS No.	Chemical name	Class	Required tests (see table 3 of this section)
*	*	*	*
1324–76–1	Benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-.	2	A, B, C1, D, E1, E2, F1.
*	*	*	*

* * * * *

[FR Doc. 2012–11493 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8229]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be

suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia: Prince George County, Unincorporated Areas.	510204	May 17, 1974, Emerg; May 1, 1980, Reg; May 16, 2012, Susp	May 16, 2012	May 16, 2012.
Region IV				
Florida:				
Collier County, Unincorporated Areas	120067	July 10, 1970, Emerg; September 14, 1979, Reg; May 16, 2012, Susp.	do*	Do.
Everglades City, City of, Collier County	125104	July 14, 1970, Emerg; October 6, 1972, Reg; May 16, 2012, Susp.	do	Do.
Marco Island, City of, Collier County	120426	N/A, Emerg; October 27, 1998, Reg; May 16, 2012, Susp.	do	Do.
Naples, City of, Collier County	125130	May 8, 1970, Emerg; July 2, 1971, Reg; May 16, 2012, Susp.	do	Do.
Seminole Tribe of Florida, Collier and Broward Counties.	120685	N/A, Emerg; March 25, 2002, Reg; May 16, 2012, Susp.	do	Do.
Mississippi:				
Greenwood, City of, Leflore County	280102	June 7, 1973, Emerg; March 18, 1980, Reg; May 16, 2012, Susp.	do	Do.
Itta Bena, City of, Leflore County	280103	January 17, 1974, Emerg; April 3, 1978, Reg; May 16, 2012, Susp.	do	Do.
Leflore County, Unincorporated Areas	280101	August 28, 1973, Emerg; November 1, 1979, Reg; May 16, 2012, Susp.	do	Do.
Morgan City, Town of, Leflore County	280104	March 1, 1974, Emerg; April 3, 1978, Reg; May 16, 2012, Susp.	do	Do.
Schlater, Town of, Leflore County	280105	May 3, 1976, Emerg; September 27, 1985, Reg; May 16, 2012, Susp.	do	Do.
Sidon, Town of, Leflore County	280106	January 30, 1974, Emerg; March 15, 1978, Reg; May 16, 2012, Susp.	do	Do.
Region V				
Illinois:				
Catlin, Village of, Vermilion County	170661	August 21, 1975, Emerg; September 4, 1985, Reg; May 16, 2012, Susp.	do	Do.
Danville, City of, Vermilion County	170662	June 16, 1975, Emerg; July 18, 1983, Reg; May 16, 2012, Susp.	do	Do.
Georgetown, City of, Vermilion County	170665	July 10, 1975, Emerg; February 11, 1976, Reg; May 16, 2012, Susp.	do	Do.
Hoopeston, City of, Vermilion County	170667	November 11, 1976, Emerg; July 3, 1985, Reg; May 16, 2012, Susp.	do	Do.
Muncie, Village of, Vermilion County	170963	July 11, 1995, Emerg; N/A, Reg; May 16, 2012, Susp.	do	Do.
Potomac, Village of, Vermilion County	170799	September 23, 1975, Emerg; September 18, 1985, Reg; May 16, 2012, Susp.	do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Rankin, Village of, Vermilion County	170668	August 1, 1975, Emerg; September 18, 1985, Reg; May 16, 2012, Susp.	.....do	Do.
Vermilion County, Unincorporated Areas.	170935	February 28, 1991, Emerg; June 1, 1995, Reg; May 16, 2012, Susp.	.....do	Do.
Westville, Village of, Vermilion County	170671	August 7, 1975, Emerg; August 19, 1985, Reg; May 16, 2012, Susp.	.....do	Do.
Ohio:				
Celina, City of, Mercer County	390393	January 22, 1975, Emerg; March 18, 1986, Reg; May 16, 2012, Susp.	.....do	Do.
Coldwater, Village of, Mercer County	390394	July 1, 1975, Emerg; February 2, 1984, Reg; May 16, 2012, Susp.	.....do	Do.
Mendon, Village of, Mercer County	390671	July 31, 1975, Emerg; November 15, 1985, Reg; May 16, 2012, Susp.	.....do	Do.
Montezuma, Village of, Mercer County	390396	June 11, 1997, Emerg; April 15, 2002, Reg; May 16, 2012, Susp.	.....do	Do.
Rockford, Village of, Mercer County	390397	July 21, 1975, Emerg; February 1, 1986, Reg; May 16, 2012, Susp.	.....do	Do.
Region VI				
Louisiana:.				
Mandeville, City of, Saint Tammany Parish.	220202	March 12, 1974, Emerg; September 28, 1979, Reg; May 16, 2012, Susp.	.....do	Do.
Texas:				
Brazos County, Unincorporated Areas	481195	January 13, 1986, Emerg; July 2, 1992, Reg; May 16, 2012, Susp.	.....do	Do.
Bryan, City of, Brazos County	480082	May 2, 1974, Emerg; May 19, 1981, Reg; May 16, 2012, Susp.	.....do	Do.
Wixon Valley, City of, Brazos County	481636	N/A, Emerg; September 4, 2001, Reg; May 16, 2012, Susp.	.....do	Do.
Region VII				
Iowa:				
Cerro Gordo County, Unincorporated Areas.	190853	December 29, 1999, Emerg; December 1, 2001, Reg; May 16, 2012, Susp.	.....do	Do.
Clear Lake, City of, Cerro Gordo County.	190059	August 7, 1975, Emerg; August 4, 1987, Reg; May 16, 2012, Susp.	.....do	Do.
Mason City, City of, Cerro Gordo County.	190060	March 21, 1975, Emerg; December 2, 1980, Reg; May 16, 2012, Susp.	.....do	Do.
Plymouth, City of, Cerro Gordo County	190061	May 24, 1991, Emerg; January 1, 1992, Reg; May 16, 2012, Susp.	.....do	Do.
Rock Falls, City of, Cerro Gordo County	190351	July 4, 1994, Emerg; July 1, 1997, Reg; May 16, 2012, Susp.	.....do	Do.
Missouri:				
Brunswick, City of, Chariton County	290074	November 12, 1975, Emerg; February 2, 1983, Reg; May 16, 2012, Susp.	.....do	Do.
Chariton County, Unincorporated Areas	290073	January 12, 1984, Emerg; December 3, 1987, Reg; May 16, 2012, Susp.		
Dalton, Village of, Chariton County	290464	December 2, 1994, Emerg; October 10, 2003, Reg; May 16, 2012, Susp.	.....do	Do.
Region IX				
Nevada:				
Eureka County, Unincorporated Areas	320028	March 9, 1984, Emerg; April 1, 1988, Reg; May 16, 2012, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: May 1, 2012.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–11524 Filed 5–11–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA–2011–0028, Notice No. 3]

RIN 2130–AC27

Positive Train Control Systems (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA amends the regulations implementing a provision of the Rail Safety Improvement Act of 2008 that requires certain passenger and freight railroads to install positive train control (PTC) systems. This final rule removes regulatory provisions that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that do not transport poison- or toxic-by-inhalation hazardous (PIH) materials traffic and are not used for intercity or commuter rail passenger transportation as of December 31, 2015.

DATES: This final rule is effective July 13, 2012. Petitions for reconsideration must be received on or before July 13, 2012. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before August 27, 2012.

ADDRESSES: *Petitions for reconsideration and comments on petitions for reconsideration:* Any petitions for reconsideration or comments on petitions for reconsideration related to Docket No. FRA–2011–0028, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions received will be posted without change to *www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas McFarlin, Office of Safety Assurance and Compliance, Staff Director, Signal & Train Control Division, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35–332, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6203); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–207, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION: FRA is issuing this final rule to amend the regulatory requirements contained in 49 CFR part 236, subpart I, related to a railroad's ability to remove track segments from the necessity of implementing PTC systems as mandated by Section 104 of the Railroad Safety Improvement Act of 2008, Public Law 110–432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20157) (hereinafter ''RSIA'') based on the track segments not carrying PIH traffic as of December 31, 2015.

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I. Executive Summary

For years, FRA has supported the implementation of positive train control (PTC) systems, forecasting substantial benefits of advanced train control technology in supporting a variety of business and safety purposes. However, FRA repetitively noted that an immediate regulatory mandate for PTC system implementation could not be justified based upon normal cost-benefit principals relying on direct safety benefits. In 2005, FRA promulgated regulations providing for the voluntary implementation of processor-based signal and train control systems. *See* 70 FR 11,052 (Mar. 7, 2005) (codified at 49 CFR part 236, subpart H).

As a consequence of the number and severity of certain very public accidents, coupled with a series of other less publicized accidents, Congress passed RSIA mandating the implementation of PTC systems on lines meeting certain thresholds. RSIA requires PTC system implementation on all Class I railroad lines that carry PIH materials and 5 million gross tons or more of annual traffic, and on any railroad's main line tracks over which intercity or commuter rail passenger train service is regularly provided. In addition, RSIA provided FRA with the authority to require PTC system implementation on any other line.

In accordance with its statutory authority, FRA's subsequent final rule, issued January 15, 2010, and amended on September 27, 2010, potentially required PTC system implementation on certain track segments that carried PIH traffic and 5 million gross tons or more of annual traffic in 2008 but that will not, as of December 31, 2015, carry PIH traffic, and will not be used for intercity or commuter rail passenger transportation that otherwise requires PTC installation under the rule. Per the regulation, the determination would be based upon whether the subject track segment would pass what has been called the alternative route analysis and the residual risk analysis (the ''two qualifying tests''), which are described below.

Upon issuance of the PTC final rule, the Association of American Railroads (AAR) filed suit in the U.S. Court of Appeals for the District of Columbia Circuit challenging the two qualifying tests provisions of the final rule. After the parties filed their briefs, they executed a settlement agreement (Settlement Agreement). In the Settlement Agreement, FRA agreed to issue a notice of proposed rulemaking (NPRM) proposing to amend the PTC rule to eliminate the two qualifying tests and to also issue a separate NPRM that will address the issues of how to handle en route failures of PTC-equipped trains, circumstances under which a signal system may be removed after PTC system installation, and whether yard movements and certain other train movements should qualify for a *de minimis* exception to the PTC rule. The Settlement Agreement further provided that FRA would consider public comments on the NPRMs in determining whether to amend the PTC rule. The Settlement Agreement also provides that upon conclusion of the current rulemaking, the parties will determine whether to file a joint motion to dismiss with prejudice or advise the Court that they are unable to resolve all issues involved in the court suit.

Consistent with the Settlement Agreement, FRA issued an NPRM in this proceeding on August 24, 2011, proposing to eliminate the two qualifying tests. Having considered the public comments on the NPRM, FRA is promulgating this final rule eliminating the two qualifying tests. FRA is in the process of developing the second NPRM which will address other possible amendments to the PTC rule.

For the first 20-years of this final rule, the estimated quantified benefits to the rail industry due to the regulatory relief total approximately $620 million discounted at 7 percent and $818 million discounted at 3 percent. Substantial cost savings will accrue largely from not installing PTC system wayside components along approximately 10,000 miles of track. Although these rail lines would forego some risk reduction, the reductions will likely be relatively small since these lines pose a much lower risk of accidents because they generally do not carry passenger trains or PIH materials, and generally have lower accident exposure. The analysis shows that if the assumptions are correct, the savings of the proposed action far outweigh the cost. The following table presents the expected quantified benefits:

BENEFITS (20-YEAR, DISCOUNTED)

Costs avoided	7% Discount	3% Discount
Reduced Mitigation Costs, Including Maintenance	$91,793,822	$121,119,324
Reduced Wayside Costs, Including Maintenance	515,695,631	680,445,643
Reduced Locomotive Costs, Including Maintenance	12,479,834	16,466,785
Total Benefits	619,969,287	818,031,752

For the same 20-year period, the estimated quantified cost totals $26.7 million discounted at 7 percent and $39.3 million discounted at 3 percent. The costs associated with the regulatory relief result from accidents that will not be prevented due to the affected track segments not being equipped with a PTC system. A substantial part of the accident reduction that FRA expects from PTC systems required under prior rules comes from reducing high-consequence accidents involving passenger trains or the release of PIH materials. FRA believes that the lines impacted by this final rule pose significantly less risk because they generally do not carry passenger trains or PIH materials and generally have lower accident exposure. The following tables present the expected total costs of the final rule as well as the breakdown of the costs by element:

COSTS (20-YEAR, DISCOUNTED)

Foregone reductions in	7% Discount	3% Discount
Fatality Prevention	$11,453,106	$16,860,327
Injury Prevention	4,254,484	6,263,104
Train Delay	117,793	173,406
Property Damage	10,163,835	14,962,367
Equipment Cleanup	143,273	210,915
Environmental Cleanup	430,995	634,475
Evacuations	138,780	204,301
Total Costs	26,702,267	39,308,896

FRA has also performed a sensitivity analysis for a high case (14,000 miles), expected case (10,000 miles), and low case (7,000 miles).

The net amounts for each case, subtracting the costs from the benefits, provide the following results:

Net societal benefits	7% Discount	3% Discount
Expected Case (10,000 miles)	$593,267,020	$778,722,856
High Case (14,000 miles)	793,856,299	1,041,764,269
Low Case (7,000 miles)	442,825,061	581,441,797

Further, the benefit-cost ratios under the scenarios analyzed range between 20:1 and 25:1.

Benefit-cost ratio	7% Discount	3% Discount
Expected Case	23.22	20.81
High Case	22.24	19.93
Low Case	24.69	22.13

II. Background

A. Regulatory History

As a consequence of the number and severity of certain widely publicized accidents, coupled with a series of other accidents receiving less media attention, Congress passed RSIA, mandating implementation of PTC systems by December 31, 2015, on lines meeting certain specified criteria, and giving FRA authority to require the PTC system implementation on other lines. 75 FR 2598 (Jan. 15, 2010). Under RSIA, such PTC system implementation must be completed by each Class I railroad carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation on:

(A) Its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided;

(B) its main line over which PIH hazardous materials, as defined in parts 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations, are transported; and

(C) such other tracks as the Secretary may prescribe by regulation or order.

49 U.S.C. 20157(a)(1). The statute further defined ''main line'' to mean:

A segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually, except that—

(A) the Secretary may, through regulations under subsection (g), designate additional tracks as main line as appropriate for this section; and

(B) for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary shall define the term ''main line'' by regulation.

49 U.S.C. 20157(i)(2). To effectuate this goal, RSIA required the railroads to submit for FRA approval a PTC Implementation Plan (PTCIP) within 18 months (i.e., by April 16, 2010).

The Secretary has delegated his authority under § 20157 to the FRA Administrator. *See* 49 CFR 1.49(oo). Consistent with the statutory mandate of § 20157, FRA published a final rule with a request for further comments on January 15, 2010, which established new regulations codified primarily in subpart I to 49 CFR part 236 (the ''PTC rule''). Subsequently, FRA received a number of petitions for reconsideration to the final rule and a number of comments responding to the request for further comments. In a letter dated July 8, 2010, FRA denied all of the petitions for reconsideration. On September 27, 2010, FRA issued a new final rule with clarifying amendments to the PTC rule.

Under the current regulations applicable to the existing railroads, each PTCIP must have included the sequence and schedule in which track segments required to be equipped with a PTC system will be so equipped and the basis for those decisions. *See* 49 CFR 236.1011. This list of track segments must have included all track segments that fit the statutory criteria in calendar year 2008. *See* 49 CFR 236.1005(b)(1) and (b)(2).

While the statutory PTC system implementation deadline is December 31, 2015, FRA recognized a need for a starting point in time to determine where such implementation must occur. The final rule indicates that such a starting baseline should be based on the facts and data known in calendar year (CY) 2008 (the ''2008 baseline''). FRA determined, and continues to believe, that using CY 2009 data would have been difficult given the proximity to the PTCIP submission deadline and the notably atypical traffic levels caused by the down turn in the economy.

Although each railroad's initial PTCIP includes a future PTC system implementation route map reflecting 2008 data, FRA recognized that PIH materials traffic levels and routings could change in the period between the end of 2008 and the start of 2016. Accordingly, in the event of changed circumstances, the PTC rule provides railroads with the option to file a request for amendment (RFA) of its PTCIP to not equip a track segment where the railroad was initially, but may no longer be, required to implement a PTC system. If a particular track segment included in a PTCIP no longer carries PIH materials traffic and applicable passenger traffic by the statutory implementation deadline, and its PTC system implementation is scheduled, but not yet effectuated, then the host railroad might avoid actual PTC system implementation by filing a supported RFA for FRA approval. Each such RFA must be supported with the data defined under § 236.1005(b)(2) and (b)(4)(i), and satisfy the two qualifying tests that were promulgated under FRA's statutory authority to require PTC system implementation to be installed on lines in addition to those required to be equipped by RSIA. If a track segment fails either of these tests, FRA would deny the request, thus requiring PTC system implementation on the track segment.

The first test, proverbially known as the ''alternative route analysis test,'' was initially codified at § 236.1005(b)(4)(i)(A) and subsequently moved to a new § 236.1020. See 75 FR 59,108 (Sept. 27, 2010). Under this test, the railroad must establish that current or prospective rerouting of PIH materials traffic to one or more alternative track segments is justified. If a railroad reroutes all PIH materials off of a track segment requiring PTC system implementation under the 2008 baseline, and onto a new line, PTC system implementation on the initial line may not be required if the new line would have substantially the same overall safety and security risk as the initial line, assuming PTC system implementation on both lines. If the initial track segment, despite the elimination of all PIH materials traffic, is determined to pose higher overall safety and security risks under this analysis, then a PTC system must still be installed on that initial track segment. PTC system implementation may also be required on the new line if it meets the 5 million gross ton of annual traffic threshold and does not qualify under the *de minimis* exception of the rule.

The second test that the railroad must satisfy in order to avoid having to install a PTC system on a track segment requiring implementation under the 2008 baseline is the so-called ''residual risk test.'' Under this test, the railroad must show that, without a PTC system, the remaining risk on the track segment—pertaining to events that can be prevented or mitigated in severity by a PTC system—is less than the national

average equivalent risk per route mile on track segments required to be equipped with PTC systems due to statutory reasons other than the presence of passenger traffic. Even lines that cease carrying PIH materials traffic can still pose significant safety risks associated with other traffic on the lines. When FRA issued its PTC rule amendments on September 27, 2010, FRA indicated that it was delaying the effective date of 49 CFR 236.1005(b)(4)(i)(A)(*2*)(*iii*), as revised under § 236.1020, pending the completion of a separate rulemaking to establish how residual risk is to be determined. While FRA has attempted to determine a suitable methodology to determine such residual risk, no rulemaking proceeding on this test has yet occurred.

B. Litigation and Congressional Hearings

After FRA issued its PTC final rule on January 15, 2010, and denied reconsideration on July 8, 2010, AAR filed a petition for review of the rule with the U.S. Court of Appeals for the District of Columbia Circuit. Once FRA issued its PTC final rule amendments, AAR filed another petition for review of those amendments on October 5, 2010. The court consolidated those two petitions on October 22, 2010 (collectively, ''Petition for Review''). In its brief, AAR challenged FRA's determination to use 2008 as the baseline year, arguing that it rests on a fundamental legal error and was arbitrary and capricious.

FRA and AAR entered into the Settlement Agreement on March 2, 2011. The terms and conditions of the Settlement Agreement included the joint filing of a motion to hold the Petition for Review in abeyance pending the completion of this rulemaking. That motion was filed on March 2, 2011, and was granted by the court on March 3, 2011. The Settlement Agreement provides that FRA will issue two NPRMs. The first NPRM, published in the **Federal Register** on August 24, 2011, and culminating with this final rule, addresses the elimination of the two qualifying tests. The Settlement Agreement provides that upon the completion of this rulemaking proceeding, the parties will determine whether to file a joint motion to dismiss the lawsuit in its entirety. As previously noted, the Settlement Agreement also provides that FRA will issue a separate NPRM that will address other possible changes to the PTC rule; that NPRM is under development.

On March 17, 2011, FRA and AAR testified before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, Committee on Transportation and Infrastructure, U.S. House of Representatives. In addition to reporting on the Settlement Agreement, FRA's testimony discussed PTC system implementation planning and progress made thus far and highlighted the various ways that FRA has assisted the industry in meeting the statutory and regulatory goals. In particular, FRA has supported PTC system implementation by developing and approving certain implementation exceptions, providing technical assistance, and granting financial assistance.

During its congressional testimony, made jointly with Norfolk Southern Railway (NS), AAR asserted that, ''If unchanged, the 2008 base-year provision means railroads would have to spend more than $500 million in the next few years to deploy PTC systems on more than 10,000 miles of rail lines on which neither passenger nor TIH materials will be moving in 2015.'' [1] FRA continues to understand AAR to assume that these 10,000 miles would still require PTC system implementation because they would not be able to pass the alternative route analysis and residual risk analysis tests. However, upon its own analysis, FRA assumes that 50 percent of the 10,000 miles would be able to pass both tests with the implementation of mitigation measures. In the NPRM to this proceeding, FRA sought comment on this assumption.

Under the regulatory impact analysis (RIA) that accompanied the original PTC final rule, FRA estimated that the railroads would need to implement PTC systems on approximately 70,000 miles of track. FRA estimated that PTC system implementation could be avoided on 3,204 miles of those 70,000 miles of track because PIH materials traffic will have ceased by 2015 and the subject track segments would pass the alternative route analysis and residual risk analysis tests. During the earlier rulemakings, no entity, including AAR or NS, challenged or otherwise commented on these conclusions.

FRA also estimated that PTC system implementation could be avoided on 304 miles of track because gross tonnage will fall below 5 million gross tons per year, or passenger service would end so that neither of the two tests above would apply. Between the two categories, FRA estimated that railroads could exclude more than 3,500 miles. Assuming that the 3,500 miles represents about 50% of those tracks where PIH materials traffic will have ceased, FRA was implicitly estimating that there would be about 7,000 miles of track where PIH materials traffic will have ceased. The AAR and its members appear to have been more effective in the future reduction of PIH materials traffic than FRA had initially estimated based on AAR's congressional testimony and subsequent submissions to FRA. In its RIA associated with the NPRM in this proceeding, FRA estimated that PIH materials traffic would cease on 10,000 miles of track on which the installation of PTC systems would have been required had the traffic not ceased. FRA considered cases where 7,000 miles, 10,000 miles and, for sensitivity, 14,000 miles of track might be excluded from PTC requirements because of changes in PIH materials traffic. As FRA was completing its analysis of the proposal, AAR submitted data that indicated its member railroads believe that they can cease PIH materials traffic on 11,128 miles of track prior to December 31, 2015, of which 9,566 miles have no passenger traffic. In analyzing the final rule, FRA continues to use the cases where 7,000 miles, 10,000 miles, and 14,000 miles of track might be excluded from PTC implementation requirements due to PIH traffic changes, because those values encompass the ranges submitted by AAR. Some of the passenger traffic miles identified by AAR may later qualify for a separate exclusion from the requirement to install a PTC system. For more discussion of those miles from which PIH traffic is removed, but on which passenger traffic remains, see FRA's Regulatory Impact Assessment, in this rulemaking docket.

III. Public Hearing, Comments, and FRA Response

After publication of the NPRM to this proceeding on August 24, 2011, which initially provided a 60-day comment period to end on October 24, 2011, the Chlorine Institute filed a request for a hearing ''to allow for a complete discussion and understanding of the many issues and concerns that would result from adoption of the Proposed Rule that would have the effect of reducing the rail routes available to shippers and receivers of chlorine and the other Toxic-by-Inhalation products that are so necessary to the health, safety and economy of the Nation.'' On October 14, 2011, FRA published in the **Federal Register** a notice of public

[1] *Hearing Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Transportation and Infrastructure Committee,* U.S. House of Representatives, 112th Cong. (2011) (Joint statement of Edward R. Hamberger, President and Chief Executive Officer of the AAR, and Mark D. Manion, Executive Vice President and Chief Operating Officer of the Norfolk Southern Railway, on behalf of the AAR's member railroads) [hereinafter AAR Congressional Testimony].

hearing and extension of the comment period to November 25, 2011. *See* 76 FR 63,899 (Oct. 14, 2011).

In accordance with that notice, FRA held a public hearing on November 10, 2011, in Washington, DC. The following individuals representing the identified entities testified at the hearing: Frank Chirumbole, President of Olin Chlor Alkali Products, Olin Corporation (''Olin''); Frank Reiner, President, The Chlorine Institute (CI); Thomas Schick, American Chemistry Council (ACC); Dr. Howard Kaplan, U.S. Magnesium, LLC (''U.S. Magnesium''); and Michael J. Rush, AAR. By November 25, 2011, FRA received comments from AAR; ACC, CI, and the Fertilizer Institute (TFI) (collectively, the ''Trade Associations''); the National Railroad Passenger Corporation (Amtrak); the Brotherhood of Maintenance of Way Employees Division (BMWED/IBT) and Brotherhood of Railroad Signalmen (BRS) (collectively, the ''Labor Organizations''); E. I. du Pont de Nemours and Company (''DuPont''); and PPG Industries, Inc. (''PPG'').

The Trade Associations' testimony and comments rely primarily on reports developed by L.E. Peabody & Associates, Inc. (''Peabody''), a firm specializing in solving economic, financial, marketing and transportation problems. Peabody developed its reports (''Peabody Reports'') on behalf of CI, which also invited Peabody to testify at the hearing regarding its own evaluation of the costs and benefits associated with PTC system implementation and on the instant proposal's potential economic harm to the PIH materials shippers.

At the hearing, the ACC supported FRA's effort to minimize unnecessary regulatory burdens and recognized that certain operational factors may affect some rail lines by no longer requiring PTC system installation. ACC asserts that these implementation changes must not prevent chemical manufacturers from shipping their products.

CI—a 200 member trade association comprised primarily of producers, repackagers and users of chlorine, and suppliers to the chlor-alkali industry—testified at the hearing that, ''Since many of the most significant rail accidents have been the result of operational errors,'' it has long advocated the adoption of new technologies, including PTC, to improve rail operational safety. According to the CI's testimony, ''While the statute only requires positive train control on TIH and passenger mainlines, all traffic on the equipped lines will derive the benefits of safer operation and improved operational efficiency.'' In their jointly filed comments, the Trade Associations representing shippers and receivers of PIH materials strongly support FRA's efforts to enhance rail safety, including the deployment of new technologies like PTC.

The remainder of this section will discuss the various commenters' concerns with FRA's proposal.

A. Routing Concerns and Shipper Participation

The Labor Organizations assert that by removing the two qualifying tests from the PTC rule, railroads may consequently be allowed to avoid PTC system implementation, hampering FRA's ability to identify routes that could be of higher risk. If the alternative route analysis test is eliminated, the Labor Organizations believe that PIH materials traffic may be rerouted to Class II railroad lines, which may have poorer track conditions, older rolling stock, and a less robust or no signal system, thus increasing the total public risk. The Labor Organizations believe that FRA should establish a mechanism to assess the risks related to the rerouting of PIH materials traffic onto lines that will not require PTC system implementation, and that such rerouting should be subject to FRA approval.

The routes railroads use to provide PIH materials transportation is governed by the routing regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA) at 49 CFR 172.820. Under the PHMSA regulations, a railroad carrier is required to: compile annual data on shipments of PIH materials and other security sensitive materials; use the data to analyze safety and security risks along rail routes used by the carrier to transport those materials and practicable alternative routes over which the carrier has authority to operate; seek information from state, local and tribal officials regarding security risks to high-consequence targets along or in proximity to the routes; consider mitigation measures to reduce safety and security risk; and select and use the practicable routes that pose the least overall safety and security risk. FRA enforces PHMSA's regulation (49 CFR part 209, subpart F). The routing of PIH materials is also impacted by the security regulations of the Transportation Security Administration at 49 CFR part 1580, which requires chain of custody requirements to ensure a positive and secure exchange of PIH materials transported by rail.

FRA does not agree with the Labor Organizations' contention that PIH materials traffic will be rerouted from Class I railroads to Class II railroads. FRA is not aware of Class I railroads attempting such rerouting; rather, consistent with the PHMSA regulations, the removal of PIH materials from certain routes is the result of Class I railroads rerouting the traffic to other lines that they operate because those other lines pose the least overall safety and security risk for the movement of this traffic.

In its filed comments, the Labor Organizations also request clarification of some of FRA's statements. For instance, in the NPRM, FRA states, ''AAR submitted data that indicates its member railroads believe that they can cease PIH materials traffic on 11,128 miles of track of which 9,566 miles have no passenger traffic. Some of the passenger traffic miles may later qualify for exclusion from the system on which PTC is required.'' 76 FR 52,922 (Aug. 24, 2011). The Labor Organizations assume, but are not completely confident, that the reference to ''exclusion from the system'' relates to the possibility that some of the passenger train operations over the remaining 1,562 miles of track might be eligible for a *de minimis* exception. The Labor Organizations request that FRA clarify whether passenger train operations exceeding the *de minimis* exclusion will require PTC system installation regardless of the absence of PIH material on the line.

With respect to the Labor Organizations' request for clarification, the existing PTC rule provides for exceptions to the requirement to install PTC systems for certain passenger train operations, as provided for in 49 CFR 236.1019. In the NPRM, FRA explained that AAR member railroads believe they can cease PIH materials traffic on 11,128 miles of track, over which 9,566 miles have no passenger traffic. The statement highlighted by the Labor Organizations means only that, of the remaining 1,562 miles of track that would now only require PTC systems as a result of passenger traffic, some of those miles of track might qualify for one of the passenger-specific exceptions and therefore be excluded from the PTC requirement entirely. The *de minimis* exception would not apply here, since there is passenger traffic on the line.

CI expressed concerns with the lack of shipper participation in PTC system implementation and proposes that a system such as the STB line abandonment process be implemented if a line is proposed to be dropped from the coverage plan. The Trade Associations echoed this in their comments, indicating that they would like shippers to be part of the process in determining where PTC systems should be implemented. They note that there

are no express provisions allowing PIH materials shippers or receivers to file PTCIP requests for amendments or requiring notification that a railroad seeks to add or remove lines from its PTCIP. The Trade Associations believe that, without shipper input, FRA may inadvertently create PIH materials transport restrictions or infeasibility. The Trade Associations suggest that FRA should establish a process that would provide PIH materials shippers and consignees an opportunity to petition the agency to require additional PTC lines to accommodate new or expanded PIH materials-related business ventures.

RSIA requires that only certain railroads submit a PTCIP. Since each railroad is legally responsible for implementing PTC systems on its own lines, FRA believes this makes sense. While FRA also requires a joint PTCIP filing where a tenant railroad would have been required to install a PTC system if the host railroad had not otherwise been required to do so, this exception exists primarily to ensure PTC system interoperability. Otherwise, FRA has not provided opportunities for parties other than the host railroad to file a PTCIP. For the same reason, FRA will not provide opportunities for third parties to file requests for amendments. To do so would create confusion and potentially impose additional burdens on the railroad. In any event, third parties do have an opportunity to express their views on the plans submitted pursuant to the PTC rule. 49 CFR 236.1011(e) continues to provide that, upon receipt of a PTCIP, NPI, PTCDP, or PTCSP, FRA will post on its public Web site a notice of receipt and reference to the public docket in which a copy of the filing has been placed. By extension, FRA also considers this paragraph applicable to any RFA that seeks to modify either of those plans and has endeavored to ensure that all plans and their RFAs are placed in their respective public dockets. FRA will consider any public comment on these documents to the extent practicable within the time allowed by law and without delaying PTC system implementation.

PPG—an international diversified chemical manufacturer that receives chlorine by rail in the U.S.—expressed concern over the lack of transparency regarding the rail lines that would be implicated by the proposed rule, denying it the opportunity to effectively evaluate the impact of the proposal on its existing and future business plans. Moreover, PPG states that the existing PTC rule does not provide any audit or review process by which FRA may verify a railroad's traffic assertions or any appeals process by which a shipper can contest a railroad's decision not to install a PTC system on a particular rail line. PPG also states that if a PTC system is not installed on a particular line before 2016, then a railroad could attempt to condition any future service for PIH commodities at very high rates, stifling the shipper's business and impeding the national economy.

The Trade Associations are also concerned with the availability of routes. According to CI, the lack of shipper participation could either restrict chlorine transportation by rail or render it unfeasible between some origins and destinations, ultimately restricting chlorine commerce and availability. If FRA were to eliminate the two qualifying tests, Peabody believes that FRA would allow the railroads to determine which track segments will be equipped with PTC systems without regulatory oversight regarding the determination of the level of safety and security on the subject segment. Peabody also expresses concerns that FRA, when making the proposal, considered the impact on the railroads, but not the shippers or the public.

The Trade Associations believe that elimination of the two qualifying tests would, produce an opportunity for the railroads to unilaterally, arbitrarily, and without regulatory oversight, determine where PTC systems must be installed and reduce the transportation of PIH materials by rail. According to the Trade Associations, ''The opportunity cannot be examined in a vacuum but must be evaluated through the prism of the railroads' other actions to greatly reduce the common carrier obligation.'' Although FRA will continue to approve any requests to modify a railroad's PTCIP, the Trade Associations perceive that such approval will be automatic and based solely on the railroad's own traffic projections and without consideration of the shippers' PIH market projections.

Dupont, a member of CI and ACC, provided additional comments. DuPont is concerned that, by removing the two qualifying tests, rail carriers would be granted the unlimited right and an incentive to refuse to provide service just by choosing routes without PTC systems despite any STB action. According to DuPont, it has experienced rail carriers moving PIH materials traffic onto inefficient routes and shifting the resulting costs elsewhere. DuPont states that by allowing the railroads to unilaterally deny the most direct route, the railroads will be allowed to violate their fundamental common carrier obligations.

Accordingly, DuPont asserts that FRA should maintain the two qualifying tests, which allow each railroad to amend its PTCIP when the railroad is able to meet certain analyses and risk assessments. DuPont also suggests that FRA expand the existing PTC rule by promulgating a self-implementation regulation providing each shipper with the power to direct its rail carrier to transport its goods on lines where PTC systems would otherwise be required and which are not so equipped and providing each railroad the ability to self-certify a risk assessment for each such line.

Olin also provided hearing testimony in favor of not eliminating the two qualifying tests. In particular, Olin is concerned that the proposed amendments will allow railroads to significantly restrict PIH shipments without shipper input or adequate FRA oversight. Olin states that the elimination of the two qualifying tests would effectively grant rail carriers *carte blanche* to determine PTC system implementation locations, which could ultimately allow rail carriers to dictate and limit efficient PIH shipments and would potentially result in increased transit times, longer shipping distances, limited customer access, and restriction to overall commerce and additional shipping costs. According to Olin, ''Allowing rail carriers to potentially limit the shipment of TIH without the protections of the 'alternative route analysis test' and the 'residual risk test,' or another appropriate process, would not only pose risks to shippers, it would also likely contradict the federal common carrier obligation which has been a keystone of U.S. rail policy for more than a century'' by opening ''a back door around the common carrier obligations for rail carriers.'' Olin also expressed concerns that the overall cost of PTC system implementation will be disproportionately placed on PIH shippers and that there are no provisions to examine shipper impact or address timely action for future PIH required rail lines.

PPG also provided comments directly relating to the purposes of the two qualifying tests. According to PPG, FRA took a crucial and important step in the original PTC rule when it required use of 2008 as the baseline traffic year to determine which rail lines would require PTC system implementation. PPG states that, ''By using a historical year as the baseline, FRA largely eliminated the possibility for railroads to manipulate their traffic statistics in light of the looming PTC requirement.''

By removing the two qualifying tests, PPG is concerned that this possibility remains. More specifically, without the two qualifying tests, PPG fears that railroads could dissuade PIH materials shipments by providing substandard service or by charging excessive transportation rates.

As an initial matter, questions relating to the quality of service provided PIH shippers and rates charged by railroad carriers for the movement of PIH materials are outside the scope of FRA's authority and properly lie with the STB.

Each of the arguments made by the Trade Associations and the other railroad shippers rest on the premise that, by rerouting PIH materials traffic to avoid the installation of PTC systems, railroad carriers will somehow be able to ''lock in'' certain routes as the only routes available to carry PIH materials after the 2015 deadline. Ultimately, however, this premise is incorrect. As discussed in more detail below, FRA does not view the PTC mandate as limiting the common carrier obligation of railroad carriers as enforced by STB, and consequently does not view a smaller map of PTC-equipped line segments as restricting the availability of rail transportation for PIH materials in the future. FRA recognizes that equipping fewer line segments with PTC systems before 2016 will increase the probability that a future PIH materials shipment would eventually require access to an unequipped line in order to reach its destination; however, such concerns will exist with any requirement to install a PTC system that does not cover all line segments. The arguments of the Trade Associations and other railroad shippers are over-inclusive, insofar as they lead to the conclusion that FRA should simply require PTC systems to be installed on as many line segments as possible. However, reducing the probability of future controversies over future installation of PTC systems is insufficient justification for potentially using the two qualifying tests as a means to require additional PTC systems implementation prior to the 2015 deadline.

FRA also rejects the premise that railroads will have an uninhibited means of rerouting PIH material traffic without meaningful oversight. As previously discussed, the rail routing of PIH materials is governed by the PHMSA routing rule. In their comments, the Trade Associations view the rail routing rule as satisfying the needs from a shipper perspective in three ways:

> ''1. Routing changes are to be based on 27 different risk-based factors and not solely on any one factor, such as cost, distance or time;
>
> 2. No matter what routing changes are made, existing origin-destination pairs are still accommodated and TIH traffic is not eliminated;
>
> 3. There is nothing in the rule that indicates that future needs for TIH traffic would be limited or avoided.
>
> Despite potential increases in shipment cost or time, the shippers' need to transport TIH materials is essentially met.''

AAR generally supports elimination of the two qualifying tests, asserting that the two tests would require PTC systems to be installed on an estimated 10,000 miles more than that required by the RSIA, at costs which substantially outweigh the safety benefits. The AAR did, however, suggest that FRA adopt slightly different regulatory language than that proposed in the NPRM; these suggested changes are discussed in the section-by-section analysis. The AAR responded to the shippers' concerns by noting that the routing of PIH materials is governed by the PHMSA rail routing rule, and that nothing in FRA's proposed rule changes, prevents, or in any manner affects, the transportation by rail of PIH materials from origin to destination.

FRA agrees with AAR that the rerouting of PIH materials traffic is properly constrained by the PHMSA rail routing rule. FRA also agrees with AAR that PIH materials traffic will continue to move on rail lines that do not have PTC systems consistent with the requirements of 49 CFR 236.1005(b)(3), and that the elimination of the two qualifying tests does not affect the railroads' common carrier obligation with respect to the transportation of PIH materials. Finally, removal of the two qualifying tests will not preclude FRA's ability or discretion under 49 U.S.C. 20502 to require PTC system implementation on additional lines in the future based on risk or other relevant factors.

B. Common Carrier Obligations

According to the Trade Associations, although FRA has made it clear in the past that it does not intend for matters within its jurisdiction to trump the railroads' common carrier obligation, FRA's determinations affect the location of PTC system implementation and, thus, where, when, how, and if PIH materials are to be moved.

Accordingly, the Trade Associations are concerned that the railroads will use PTC system implementation as a means to limit their common carrier obligations with respect to PIH materials. More specifically, at the hearing, CI expressed that, ''We're concerned that FRA's [PTC] rule will be used to attempt to alter that common carrier obligation, which we fully understand is under the STB jurisdiction.'' While the Trade Associations recognize that it is not FRA's responsibility to enforce the railroads' common carrier obligation to transport PIH materials, they assert that PTC system implementation must not erode that obligation. The Trade Associations provide examples where FRA has considered the common carrier obligation in the past. For instance, in 2008, the Department testified before the STB, stating:

> [R]ailroads have a common carrier obligation to transport hazardous materials and cannot refuse to provide service merely because to do so would be inconvenient or unprofitable. While the railroads have expressed concern over this obligation, particularly with respect to their potential liability exposure arising from train accidents involving the release of poisonous by inhalation hazard or toxic inhalation hazard (referred to as PIH or TIH) materials, DOT believes that there is no reason to change this common carrier obligation.''

Testimony of Clifford Eby, Deputy Federal Railroad Administrator, *Common Carrier Obligation of Railroads,* STB Ex Parte No. 677 (Sub-No. 1) (July 22, 2008).

The Trade Associations also state that the Department is on record as saying that railroads would be violating the common carrier obligation if they attempted, through their interchange rules, to prevent the movement of hazardous materials through the application of tank car specifications different from those duly considered and approved by the Department.[2]

Moreover, the Trade Associations request that FRA confirm its interpretation of 49 CFR 236.1005(b)(3)(ii), which states: ''If PIH traffic is carried on a track segment as a result of a request for rail service or rerouting warranted under part 172 of this title, and if the line carries in excess of 5 million gross tons of rail traffic as determined under this paragraph, a PTCIP or its amendment is required.'' The Trade Associations believe that this language, consistent with the common carrier obligation, implies that a rail carrier may not deny a shipper's request to transport PIH materials solely on the

[2] But see 73 FR 17818, 17824–25 (April 1, 2008). In its comments, the Trade Associations misunderstand FRA's statements. In this and the referenced proceeding, FRA has not asserted any authority to determine a railroad's common carrier obligation. In the rulemaking cited by the Trade Associations, FRA discussed the test used by STB to determine the reasonableness of interchange requirements in assessing if those requirements violate the common carrier obligation before ultimately concluding that FRA did not view the particular interchange requirement at issue as reasonable.

grounds that a PTC system is not installed on any line segment necessary to complete the requested transportation. The Trade Associations believe that this regulation requires the railroad to accept the PIH materials traffic for transportation consistent with its common carrier obligation, amend its PTCIP, and equip the necessary track with a PTC system within 24 months, pursuant to 49 CFR 236.1005(b)(3)(iii).

PPG also believes that FRA must be mindful of the interplay between the PTC regulations and the railroads' common carrier obligation, which requires the carriers to provide service on reasonable request. PPG expresses similar concerns with the regulatory provision cited by the Trade Association and complains that seeking STB enforcement of the railroads' common carrier obligation could take months, if not longer, to resolve. Accordingly, PPG urges FRA to clarify that 49 CFR 236.1005(b)(3)(ii) does not permit a railroad to refuse PIH materials service because a rail line does not have a PTC system installed, and that rail movement of PIH commodities may be provided over a non-PTC-equipped line pending approval of FRA and the actual construction to add a PTC system to such line.

US Magnesium also testified at the hearing. While extracting magnesium from the Great Salt Lake brines, US Magnesium produces chlorine as a co-product. Since chlorine cannot be vented or stored, US Magnesium must ship or sell it. However, according to US Magnesium, the chlorine market is seasonable and dynamic, with customers and demand levels always changing, requiring the company to change chlorine shipping routes to meet market conditions. US Magnesium believes that PTC technology will contribute greatly to continuing incident free performance and it claims that it has been affected by the railroads' interest in limiting or ceasing PIH shipments. While it recognizes the STB's resistance to railroad attempts to unilaterally restrict PIH routings, US Magnesium believes that removal of the two qualifying tests would allow elimination of lines from a PTCIP, thus facilitating the railroads' efforts to limit their common carrier obligation. US Magnesium expects the railroads to argue to the STB that they should not be ordered to provide PIH service over routes where they have informed FRA that no PTC system will be installed.

These comments indicate some confusion over the jurisdiction of the various federal agencies governing the rail transportation of hazardous materials. Specifically, these commenters suggest that the PTC rule might be construed by FRA or STB to limit what line segments PIH materials may travel over. The structure of 49 CFR part 236, subpart I, requires that PTC systems be installed on many line segments over which PIH materials are transported; it does not in any way govern the movements of PIH materials.

While both FRA and STB are vested with authority to ensure safety in the railroad industry, each agency recognizes the other agency's expertise in regulating the industry.[3] FRA has expertise in the safety of all facets of railroad operations, and is authorized to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries. 49 U.S.C. 20101 and 20102. Concurrently, the STB has expertise in economic regulation and assessment of environmental impacts in the railroad industry, as an economic regulatory agency charged by Congress with resolving railroad rate and service disputes and reviewing proposed railroad mergers and acquisitions. See 49 U.S.C. 10701(a), 10702. Further, there is no limitation over the STB's authority to address the reasonableness of a railroad's practices. See STB Ex Parte No. 661, Rail Fuel Surcharges (Aug. 3, 2006). Together, the agencies appreciate that their unique experience and oversight of railroads complement each other's interest in promoting a safe and viable industry.

Accordingly, FRA recognizes that conflicts between railroad carriers and railroad shippers relating to common carrier obligations are best resolved by STB. The STB has previously ruled on railroad obligations to quote common carrier rates and provide service for the transportation of PIH materials such as chlorine. *Union Pacific Railroad Company,* STB Finance Docket No. 35219 (2009); see also *Akron, Canton & Youngstown Railroad Company* v. *Interstate Commerce Commission,* 611 P.2d 1162 (6th Cir. 1979). FRA does not seek to interfere with STB's role in providing economic oversight of the railroad industry. Rather, just as the STB has previously declined to substitute its safety and security judgments for those of FRA, FRA presently declines to substitute its economic judgments for those of STB. In establishing and modifying rules governing PTC system implementation, FRA does not regulate what route over which PIH materials must move, as responsibility for such regulations lies with PHMSA. See 73 FR 72182 (Nov. 26, 2008). FRA's PTC regulations expressly allow for new PIH material traffic over a line segment that previously lacked such traffic, and as such does not preempt the oversight and regulatory functions of either PHMSA or STB.

FRA is aware that the impact of the present rulemaking will be to reduce the number of line segments included within the overall map of PTC system installations. The Trade Associations argue that the result of this reduction will be an ability of railroad carriers to unilaterally restrict PIH materials shipments by reducing the number of PTC-equipped line segments and subsequently refusing to carry PIH materials that would require straying from these line segments. However, because neither the prior or instant PTC rulemakings limit or restrict the common carrier obligation, enforced by STB, FRA does not view a reduction in PTC-equipped line segments as causing a reduction in available service for future PIH materials shipments. Additionally, there are substantial checks on a railroad's ability to modify its routes in such a manner. Oversight by the STB and FRA (in enforcing the PHMSA rail routing regulation) may preclude or even require certain routing and rerouting decisions. Furthermore, because railroads will likely seek to maximize the return on their investment in PTC system installation, railroads can be reasonably expected to maximize the connectivity of PTC-equipped segments to limit where additional PTC systems may ultimately be required. As discussed above, even where a railroad is able to reroute its PIH materials traffic in accordance with the PHMSA regulations, resulting in future PIH materials traffic needing to traverse a line segment that does not have a PTC system in order to travel from its source to its destination, FRA does not view such rerouting as a barrier to future PIH materials traffic. While STB is the agency ultimately responsible for the enforcement of the common carrier obligation, and FRA recognizes that PTC system implementation may affect STB's review of rates, FRA does not view the requirement to install PTC systems on certain rail lines as affecting the common carrier obligation in any way.

With respect to the application of 49 CFR 236.1005(b)(3), FRA views the provision as neutral with respect to the

[3] The rail transportation policy, 49 U.S.C. 10101, establishes the basic policy directive against which all of the statutory provisions the Board administers must be evaluated. The RTP provides, in relevant part, that ''[i]n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation'' by allowing rail carriers to ''operate transportation facilities and equipment without detriment to the public health and safety.'' See, e.g., 49 CFR part 244; 67 FR 11582 (Mar. 15, 2002).

common carrier obligation. Where new PIH materials traffic exists on a line that meets the tonnage threshold, whether by the railroad's acceptance of the PIH material for transportation or by STB action to require such transportation, the rule requires the railroad carrier to file a PTCIP or RFA as soon as possible and to implement a PTC system on that line segment within 24 months. FRA expects that PTCIP or RFA to include risk mitigation and other measures necessary to effectively and efficiently implement the new PTC system so that PIH materials may safely traverse the line segment during those intervening two years. If the filings do not sufficiently address these issues, FRA may approve the PTCIP or grant the RFA with conditions intended to ensure as much.

C. Passenger Rail Impact

In its filed comments, Amtrak reiterates its support of PTC system implementation and expects that it will complete installation on its lines in advance of the statutory deadline. Amtrak's comments are otherwise limited to concerns relating to the impact of this rulemaking on passenger railroads, and on federal and state funding requirements for passenger rail service. Amtrak states that if the proposed rule is adopted, railroads will not be required to install PTC systems on rail lines that were used to transport PIH shipments in 2008, but are no longer being utilized for PIH materials traffic as of December 31, 2015. Amtrak expresses concern that passenger rail operators—whose presence may now be the sole reason for mandatory PTC system implementation on those lines—may be asked to bear some or all of the costs of PTC system installation that would have been borne by freight railroads under the original rule. Amtrak believes that this rule may pose a risk to the continued operation of affected passenger rail services since they do not generate profits, rely on constrained taxpayer funding, and Amtrak is already burdened by the need to fund PTC system installations on lines it owns.

Amtrak states that the impact of the proposed rule on passenger railroads cannot be determined from the record in this proceeding. While the RIA invited comments on the accuracy of the data submitted by AAR—indicating that its member railroads have 1,562 route miles used for passenger rail service on which PIH materials traffic was handled in 2008, but on which PIH materials traffic is expected to cease by 2015—Amtrak argues that the data is insufficient to determine the affected route segments that have passenger rail service. Amtrak asserts that additional federal funding is limited.

FRA understands that, upon cessation of PIH materials traffic, a line segment may still require PTC system implementation due to the existence of passenger traffic. In some situations not under the control of FRA, this may result in the distribution of costs between the freight and passenger railroads. However, as was the case with respect to similar concerns expressed by the Trade Associations and shippers, this distributional concern alone does not provide adequate justification for maintaining the two qualifying tests. Moreover, it is within the jurisdiction of the STB to settle disputes and determine appropriate rate structures between freight railroads, shippers, and passenger operators in these circumstances. In response to Amtrak's concerns relating to insufficient funding, the availability of funds to support passenger railroads in the installation of PTC systems is outside the scope of this rulemaking. In regards to Amtrak's concerns regarding insufficient data to determine the affected route segments, it is FRA's understanding that the host and tenant railroads, through their discussions, would be able to communicate this information. To provide that information in this proceeding risks exposing certain sensitive security information.

D. Cost-Benefit Analysis

1. Trade Associations

The Trade Associations also take issue with FRA's cost-benefit analysis, asserting that it is flawed. The Trade Associations support the Peabody Reports' assertion that FRA relied upon a cost-benefit analysis that substantially and erroneously excluded business benefits accruing to railroads, shippers and the public. According to the Trade Associations, this exclusion of business benefits violates Office of Management and Budget (''OMB'') Circular A–4, which governs cost-benefit analyses conducted by federal agencies and resulted in an erroneous cost-benefit ratio of 20:1 in the PTC final rule published on January 15, 2010. The Trade Associations assert that the flaws in the January 2010 cost-benefit analysis accompanying the original final rule are continued and more extensive in the instant rulemaking.

Ultimately, the Trade Associations and Peabody contend that FRA's cost-benefit analysis should have considered business benefits that they contend would significantly reduce the gap between the required PTC system implementation's costs and benefits. These parties discuss a 2004 report produced by Zeta-Tech Associates, commissioned by FRA, quantifying the business benefits of positive train control, with direct and indirect business benefits ranging between $2.2 and $3.8 billion annually, in 2001 dollars.[4] According to the Trade Associations, these benefits include increased line capacity; fuel savings; improved rail dispatching operations; and societal benefits from reduced highway crashes and reduced pollution emissions. Using these findings, in conjunction with other sources, FRA in 2004 submitted a report to Congress offering differing opinions as to whether or not PTC technologies could generate business benefits. One point of view was that PTC technologies could create net societal benefits that ranged from $2.1 to $3.9 billion annually, including significant accident-avoidance benefits as a result of modal diversion from highway to rail transportation.

Peabody posits that Congress passed RSIA in 2008 based in part on FRA's report. Peabody also indicates that as part of the rulemaking developing the 2010 PTC rule, FRA updated each element of the 2004 report, but did not include them in the RIA for that rule, which considered only direct railroad safety benefits and total direct implementation costs in its cost-benefit analysis. If FRA had included the business benefits as part of its economic analysis associated with the initial PTC rulemaking published on January 15, 2010, Peabody contends that the cost-benefit ratio would have been restated as 1.1:1.0. Peabody's own May 2010 report asserts that a 0.86:1.00 cost-benefit ratio is more realistic. However, by not including those benefits, FRA's RIA reflected a cost-benefit ratio of 21.7:1.0.

In its report, Peabody asserts that FRA's cost-benefit analysis in this rulemaking should be based on the ''no action scenario'' (i.e., where PTC systems are not required), which would result in a much lower cost-benefit ratio than the 1:20 ratio contemplated by this rulemaking. In other words, Peabody believes that FRA should determine the change in costs and benefits where PTC

[4] Zeta-Tech Associates, *Quantification of the Business Benefits of Positive Train Control* (Mar. 15, 2004) at 10–11. The Zeta-Tech analysis' estimate of benefits ranged as low as $0.9 billion annually, including $0.4 billion in benefits accruing to shippers. See also Federal Railroad Administration, Benefits and Costs of Positive Train Control (Aug. 2004) (noting the numerous assumptions made by the Zeta-Tech analysis and also noting that some of these benefits may already be realized or may be realized without PTC system implementation).

systems have not yet been installed, not where PTC systems will be installed in the future. According to Peabody, FRA's cost-benefit analyses support a perceived effort by the railroads to limit routes, forcing more PIH onto the roads or increasing shipper costs.

FRA disagrees with Peabody. The ''no action scenario'' would leave the final rule in place and PTC system implementation would be required without the relief of this rulemaking. Peabody misstates what result occurs in a ''no action scenario'' for this rulemaking. Contrary to Peabody's assumptions, if FRA were not to publish this final rule, the result would be a continuation of the requirement to install PTC systems on certain line segments. In Circular A–4, Regulatory Analysis, the Office of Management and Budget, says ''[i]t may be reasonable to forecast that the world absent the regulation will resemble the present. If this is the case, however, your baseline should reflect the future effect of current government programs and policies.'' The future effect of the prior final rules is that PTC systems will be installed on a number of line segments. Accordingly, the no-action alternative includes the cost of PTC systems on those line segments and the commensurate costs and benefits. Peabody, as well as the Trade Associations generally, also relies on the Zeta-Tech Report to claim that FRA has failed to account for some business benefits that result from PTC system implementation. However, as FRA stated in its contemporaneous report to Congress, many of these benefits were speculative or achievable through other means. The intervening years have validated FRA's concerns with the report. The PTC systems that presently exist lack some of the features that Zeta-Tech used to justify its benefit assumptions, and railroads have already achieved some of the operational benefits without PTC system implementation. Accordingly, FRA cannot treat these benefits as attributable to PTC system implementation.

Peabody asserts that FRA does not consider the costs or benefits to shippers or the public in its analysis. Peabody comes to this conclusion based on the exclusion of business and other societal benefits. Peabody also claims that FRA includes only railroad safety benefits in its economic analyses and continues to exclude business and other societal benefits that FRA had itself identified, quantified, and championed for much of the previous decade. FRA specifically did account for safety benefits accruing to society at large, such as evacuations. The costs of removing these benefits are accounted for in this final rule.

In analyzing the PTC rule, FRA included a sensitivity analysis with business benefits when it appeared there was a possibility that a railroad would adopt a PTC system capable of generating business benefits. According to the railroads' PTCIPs submitted to FRA, there are no PTC systems that would generate business benefits, other than from train pacing, in the 20-year analysis period. The only business benefit that FRA had included in its base analysis of the PTC final rule was fuel savings that would result from train pacing. Only one railroad has adopted train pacing systems integrated with its PTC system, and that railroad is not likely to change the number of locomotives equipped for train pacing, and thus is not likely to see any change in its business benefits. In other words, issuance of this final rule is not expected to impact fuel saving benefit levels. To the extent that PTC systems planned for implementation would not include aspects to facilitate business benefit realization, there is no impact on business benefits from reducing the mileage over which wayside components will be installed. FRA does not anticipate the other forms of business benefits identified in the Zeta-Tech Report—improved work order reporting and precision dispatch systems—to be present in the PTC systems implemented by railroads. No such systems have been described in the PTCIP of any railroad; furthermore, while some railroads are implementing work order reporting and precision dispatch systems, these railroads are not integrating the systems into their PTC system due to technological infeasibility.

FRA does not have any evidence that railroads installing PTC systems have found a way to make a profit by integrating additional equipment that would generate the kinds of business benefits described in the Peabody analysis. The railroads have long argued that there was no way for them to make a profit from PTC systems, and their behavior is consistent with that assertion. In FRA's 2004 letter report to Congress, the suggested business benefits would have been relatively large, but very little of that business benefit would have accrued to railroads. The business benefits would have gone in large measure (roughly 80 percent) to shippers, who in turn would have created even larger societal benefits. There is no market mechanism for railroads to share in most of those benefits. FRA therefore has no reason to believe that railroads will perform technological integrations that will create large business benefits.

According to Peabody, FRA relies on several unsupported assumptions and estimates to derive its cost and benefit calculations. This appears to be a criticism of two assumptions that FRA relied upon in order to estimate this rule's impact: that 50 percent of segments submitted for exclusion from the system would have passed the ''two tests'' and that, under the prior rule mitigation costs, the costs of risk mitigating technologies currently referenced under § 236.1020, would have averaged $10,000 per mile. While AAR also questioned the assumption that 50 percent of segments would pass the two tests, AAR did not comment on the estimate for mitigation costs.

To perform a cost-benefit analysis in this proceeding, FRA required an estimated number of miles in the PTC network that would be affected by the final rule, and therefore estimated the number of miles in the PTC network that would fail one or both of the two qualifying tests and would have been required to be PTC-equipped. The two qualifying tests were intended to ensure that PTC systems were installed on certain risk-sensitive line segments. The tests would have no impact had all segments or no segments met the requirements of both tests. In order to estimate the affected mileage, FRA needed an estimate of how many miles the railroads could justify and likely remove from their systems—a figure provided by AAR (estimated at 10,000 miles in the base case)—and an estimated probability of how likely those segments meet the minimum requirements of the two qualifying tests had the prior final rule remained unchanged.

As noted, the two qualifying tests were never fully implemented and applied to track segments, so it is impossible to make inferences about the test results. Since the residual risk test was not developed, FRA cannot make an informed estimate of the proportion of segments likely to fail one or both of the two qualifying tests. FRA chose 50 percent as an estimate of the proportion of segments the railroads want to remove from PIH materials service that would pass both tests, because it provides the lowest expected difference from a percentage chosen at random in the possible range of 0 percent to 100 percent. No party has offered an alternative estimate, and no party has provided a means of deriving an alternative estimate, despite FRA's request for comments and information on this issue. *See* 76 FR 52,918, 52,921, 52,924. If FRA were to conduct a

sensitivity analysis on this range, it would be difficult to choose a range of passing percentages for the undeveloped test. For the purposes of argument, FRA uses a range of 25 percent to 75 percent, representing a broad range of possible percentages covering half of the possible range from 0 percent to 100 percent.

Given this reasonable range, an additional sensitivity analysis is unnecessary, as such an analysis would yield similar results as the analysis already present. In the sensitivity analysis of the NPRM, which estimated the range of miles of line segments over which PIH materials would be removed, FRA calculated benefits with the number of miles equaling 7,000 miles, 10,000 miles, and 14,000 miles. As discussed above, some of these miles would have no longer been required to have an implemented PTC system under the prior rules; FRA estimated that only half of these miles would be required to install PTC systems under the prior rules. As such, FRA calculated the benefits of removing PTC systems from 3,500, 5,000, and 7,000 miles—50 percent respectively of 7,000, 10,000, and 14,000 miles. Were FRA to perform a new sensitivity analysis on the percentage of miles that would have no longer been required to have a PTC system implemented, the estimates of 25 percent, 50 percent, and 75 percent of miles passing the two qualifying tests and not requiring PTC systems would result in 7,500, 5,000, and 2,500 miles—75 percent, 50 percent, and 25 percent of 10,000, respectively—that would have nonetheless required PTC systems. Accordingly, FRA would calculate the benefits of removing PTC systems from 2,500, 5,000, and 7,500 miles. The analysis of mileage estimates so similar to those used by FRA in its existing sensitivity analysis would not yield meaningful new data, and therefore additional sensitivity analysis on the percentage of segments passing both tests would be redundant.

Peabody also objects to the estimates of mitigation costs avoided. Under the PTC final rule issued in January 2010, in order to remove some segments from the PTC system network, and to compensate for the resulting safety reductions, the railroads would have had to propose mitigations of the additional risk created by that removal. FRA purposefully avoided defining such mitigations, providing the railroads the flexibility to propose their own solutions, which would then be subject to FRA approval. Even if FRA had fully developed the methodologies for the two qualifying tests, FRA still would not have prescribed particular mitigations, and therefore would not require mitigation that would be more costly than the estimates provided and where less costly solutions are available. To estimate these mitigation costs, FRA made the reasonable assumption that mitigation costs could only rise to a certain percentage of the total wayside costs of implementing PTC technologies; as the cost of mitigations rises, the likelihood rises of a railroad deciding to install a PTC system rather than incur the mitigation costs. The mitigation cost estimate also includes resources that might have been expended to pass the tests. Despite FRA's request for comments on its calculation of costs, no commenter provided alternative estimates or methodologies for the agency to use in lieu of the present estimates.

Peabody also states that FRA ought to include business benefits because FRA included some uncertain figures without including other uncertain figures. More specifically, according to Peabody, FRA is uncertain about the correct values of the two figures it included in its business economic estimates (i.e., the proportion passing both qualifying tests and the cost per mile for mitigations) and FRA was also uncertain (in analyzing the PTC rule) about whether business benefits would be generated, which FRA did not include. FRA is certain that a percentage of track segments would have passed the two qualifying tests, and is using the best estimate available to calculate the impacts. FRA is also certain that some segments would have required mitigation, and is using the best information available regarding the expected cost of the mitigations. FRA was required to estimate these values, and FRA has pointed out that within reasonable ranges the exact value of these estimates will not affect FRA's conclusions. The final rule still provides net societal benefits regardless of the range of impact. In other words, since the costs exceed the benefits for any given mile of PTC system implementation, removing the requirement to install a PTC system for any number of miles in the scope proposed will result in a net benefit. At this time, FRA is less uncertain about whether the PTC systems being adopted under the PTC rule will create business benefits of the type and magnitude explored in the sensitivity analysis of the prior final rule, for the reasons described above. It is clear that with minor exceptions, unaffected by this final rule, the railroads have adopted PTC systems that will not likely create the kinds of business and societal benefits suggested in the sensitivity analysis of the prior final rule.

Peabody asserts that in many cases FRA accepts, without question, AAR's estimates and assumptions. Peabody also claims that FRA improperly focuses on the net costs and benefits associated with PTC system implementation based on the AAR's estimated 10,000 track miles that would be PTC-equipped but for the proposed rules changes. Peabody says that, in doing so, FRA fails to account for 3,500 track miles it had originally determined would not be equipped with PTC systems.

FRA did not accept or adopt any of AAR's estimates without first analyzing them. Peabody refers to estimates of how many miles of PTC system wayside equipment would be affected by this rule. FRA includes AAR's estimate as the base case, because railroads are the parties most likely to know how much wayside would be affected. The railroads' actions will determine how much of their systems may be excludable under the final rule, and they do not seem to have an incentive to misstate that amount.

As previously noted, FRA assumes that 50 percent of the segments that the railroads plan to remove from the PTC network could pass both tests. When analyzing the PTC rule published in January 2010, FRA had estimated that the railroads could exclude roughly 3,500 miles due to the cessation of PIH materials traffic. If those segments represent the 50 percent of those track segments that would have passed the two tests, this would imply that the railroads would have been interested in removing roughly 7,000 miles from their PTC networks, a figure that has become the low benefit case.

In its analysis for the NPRM in the instant proceeding, FRA assumed that the 3,500 miles are a subset of those 10,000 miles that would not be equipped with PTC systems, and are therefore accounted for. When analyzing the PTC rule published in January 2010, FRA needed to estimate the number of miles that might have been eligible to avoid PTC system implementation in the event that PIH materials traffic would be removed. FRA reviewed traffic patterns for segments from which FRA believed the railroads could remove PIH materials traffic with little or no difficulty. For that rulemaking, this information supported the conservative estimate used in the analysis of the NPRM. FRA did not receive any dissenting comments.

In analyzing the NPRM issued in the instant proceeding, FRA attempted to remain consistent with the aforementioned prior analysis, as it had

subsequently become the subject of much discussion. From the railroads' submissions, it does not appear that the 10,000 miles are in addition to the 3,500 miles; rather, the 3,500 miles are a subset of the 10,000 miles. In its comments, AAR did not challenge or correct FRA's impression that the 10,000 miles included the 3,500 miles. FRA therefore continues to assume that the 3,500 miles are a subset of the mileage AAR intends to remove from PIH service. In reviewing AAR's data, FRA found that the 10,000 miles included many track segments that FRA, in previously arriving at the 3,500 mile figure, did not think it would have been practical to select for removal of PIH materials traffic when compared to the 3,500 miles for which there appeared to be several logical mitigation treatments. FRA was presented with several options for estimating the impact of this rule in light of the new data provided by AAR. While FRA could have analyzed a low case that consisted of removing the two tests from the 3,500 miles, yielding an estimate where the savings were the avoided costs of undergoing the two tests and undertaking mitigations, this does not seem to be a reasonable alternative to analyze as the railroads are already claiming that they intend to remove many more segments from PIH service. Alternatively, FRA could have treated the 3,500 miles as the only subset of the 10,000 miles that would pass the two tests. As a result, the percentage passing both tests would be 35 percent with a base mileage of 10,000 miles. As noted in the sensitivity analysis, the 14,000 mile case with 50 percent proportion passing both tests provides very similar results as considering a 10,000 mile case with only 30 percent passing both tests. A case using 35 percent is not very different from a case using 30 percent, and presenting it would not add any value to a decision maker. Finally, FRA could continue to use the 3,500 mile figure as representative of what would happen in a low case, with 7,000 miles and 50 percent of segments passing both tests. This adds value as a low case in sensitivity analysis. FRA has adopted this latter approach, and continues to believe the approach is sound.

Peabody also claims that, if FRA were to reconduct its economic analysis of the prior final rules, the outcome would be a reduced estimate of the total cost of PTC wayside implementation. However, FRA is not updating its analysis of the prior final rule; the agency is only estimating the impacts of the changes induced by this final rule. This estimate relies upon PTC system implementation plan submissions to arrive at total PTC system mileage, though total mileage has relatively little impact on the analysis, and on AAR representations as to the affected mileage. Peabody also uses its mileage estimates to argue that fewer locomotives than FRA estimates will no longer need to be equipped with PTC onboard apparatuses. In making this comment, Peabody appears to rely on its mileage estimates that differ with FRA's. FRA's estimates are based on actual railroad PTC implementation plans, and on its estimates of affected mileage. The primary use of this calculation is for FRA to estimate the impact on locomotive costs on small entities. In doing so, FRA also estimated impact of this final rule on Class II railroads. Reduced locomotive costs account for roughly 2 percent of the benefits. Even if FRA were to reduce that by 30 percent, as Peabody requests, the total societal benefits accruing from this rulemaking would be decreased by 0.6 percent. Use of the Peabody estimate would not impact the RIA's conclusion.

Peabody also asserts that FRA erred in assuming an annual PTC system maintenance cost of 15 percent of the total installation costs, substituting a 12.5 percent factor. However, FRA continues to believe maintenance costs will be relatively high compared to electronic equipment that does not need to pass strict qualification procedures. Railroads and their suppliers will use components developed for the general market, including microprocessors. The railroad segment is not sufficiently large to provide an incentive for chipmakers to develop or manufacture microprocessors exclusively for railroad use. Thus, when microprocessors become obsolete, the railroads and their suppliers will have to buy different microprocessors, and re-qualify their PTC systems using the newer microprocessors. This will increase the maintenance costs relative to the value of the installed base. FRA will continue to use its estimate that maintenance costs will be 15%, and will adjust only if future empirical evidence indicates otherwise. Maintenance cost savings were 59 percent of the total benefit using a 7 percent discount factor and 65 percent of the total benefit using a 3 percent discount factor. Reducing maintenance costs by one-sixth (12.5 percent instead of 15 percent) would reduce the total benefit estimate by 10–11 percent. Even assuming the lower number of locomotives estimated by Peabody and the lower maintenance savings estimated by Peabody would not have any impact on the conclusions of the analysis, that benefits far exceed costs.

Peabody also argues that FRA improperly shifted the analysis period from 2009–2028 to 2012–2031. However, as was the case in several of Peabody's other arguments, here Peabody fails to take heed of the fact that the instant rulemaking is a new proceeding. Accordingly, FRA has adopted a current starting point and 20 year time period for analysis. Decisions made prior to this rulemaking were not impacted by this rulemaking, and this analysis is appropriately forward-looking only.

Peabody claims that the exclusion of so-called headline accidents is unverified. FRA pointed out in its analysis that all of the headline accidents involved either passenger trains or release of chlorine, a PIH material. Relief under this rulemaking will only apply to segments from which PIH is removed (except for *de minimis* quantities) and do not have passenger traffic except on other than main lines as defined in the regulation. The conditions under which the headline accidents generally occur would not allow for line segments to get relief from PTC requirements. Thus, headline accidents are not relevant to the costs or benefits of this rule, as there is not a substantial risk of such accidents occurring on the line segments no longer required to be equipped with PTC systems as a result of this rule. Peabody also objects to applying a percentage to the risk of other PTC-preventable accidents on the segments. FRA reviewed data submitted by railroads for segments likely to be those from which PIH materials traffic would be removed, and made two observations. First, FRA observed that the railroads claimed that only 21 PTC-preventable accidents had occurred over a 7 year period, an average of 3 per year. This contrasts with the PTC-preventable accident data on which FRA based the PTC final rule, which showed an average of 52 PTC-preventable accidents per year, excluding headline accidents. FRA also observed that in general the segments appeared to have below-average tonnage volumes, although FRA does not have directly comparable volume data for the entire PTC network. It seemed improbable to FRA that roughly 16 percent of the PTC network had only 5.8 percent of the PTC-preventable accidents, but clearly the average risk per mile would be lower. The calculated probability of an accident on the miles to be removed was 36.2 percent of the likelihood on the

entire PTC network.[5] It also seemed unlikely that the risk per mile was identical between the entire PTC network and the miles to be removed from PIH materials service. As a conservative estimate, FRA used a value of 60% to estimate the accident benefits that would no longer occur on segments removed from the PTC network, a value that leads to a higher estimate of costs than a value of 36% would have. In other words, 60% constitutes a risk estimate within a range of 36% and 100% of the risk for the segments not subject to this rule, and the 60% estimate falls toward the lower end as a result of adjustments for density and regulatory changes implemented since the publication of the previous final rule. Peabody argues that the removal of the headline accidents was a sufficient reduction in estimated risk. FRA disagrees. In addition to the reduction of risk from the absence of PIH and passenger traffic, the available evidence indicates that the segments eligible for exclusion are less likely to have non-headline PTC-preventable accidents, and FRA has estimated the costs and benefits of excluding such segments accordingly.

Finally, Peabody objects to FRA's approach to annualization of costs. This approach is based on OMB guidance and used by DOT for all significant regulations.[6] Accordingly, FRA will retain the annualized estimates.

2. AAR

AAR recognizes the RSIA mandate that PTC systems must be implemented by December 31, 2015, on main lines used to transport passengers or PIH materials and that FRA maintains the statutory discretion to require additional PTC system implementation. However, AAR asserts that FRA's discretion must be exercised reasonably. With a cost-benefit ratio of 20:1, AAR believes that it is patently unreasonable for FRA to exercise any discretion beyond the statute's minimum implementation requirements. For the same reason, AAR states that the two qualifying tests are inconsistent with RSIA, because, ''No additional prerequisites are appropriate unless FRA can justify additional PTC requirements beyond the statutory mandate. There is no justification for going beyond the statutory mandate in any event, but especially with such a disparate cost-benefit ratio.''

AAR believes that removal of the two qualifying tests could result in avoiding PTC system implementation on 10,000 track miles. AAR determined this amount based upon the difference between PIH materials route maps as they looked in 2008 and what they expect them to look like by the end of 2015. AAR expects a reduction in track miles upon which PIH materials will be transported due to a change of customer demands, regulatory compliance, and pro rata changes to become more efficient. AAR estimates PTC system installation-related savings of $50,000 per mile, totaling $500 million. AAR expects further savings from avoiding the associated maintenance costs.

With the removal of the two qualifying tests, AAR believes that a railroad should still be able to file an RFA to remove a track segment from the PTCIP's implementation schedule if there is passenger service on the line that qualifies for a main line track exclusion under 49 CFR § 236.1019. According to AAR, the statement in the first sentence of proposed § 236.1005(b)(4)(i)—that a line qualifies only if there is a ''cessation of passenger service''—could be interpreted as stating that a PTC system will be required for a line over which no PIH materials will be transported after 2015 if there is any passenger service, even if the passenger service qualifies for a main line track exclusion. While FRA viewed the prior language as sufficient to allow for the exclusion of such lines, the rule text has nonetheless been further clarified to explicitly reference main line track exclusions.

In the preamble to the proposed amendments, FRA asks about the accuracy of its cost-benefit analysis. While there are some differences between AAR's and FRA's assessment of costs, the differences would not materially affect FRA's conclusion that the costs to the industry that would be avoided far outweigh any benefits that would be lost. In general FRA assumes the base cost of $50,000 per mile has not changed as a result of technological advancements. Further, FRA assumes this $50,000 per mile estimate represents a variable cost estimate that is relatively constant across different segments of track.

While AAR indicated that removal of the two qualifying tests could potentially avoid PTC system implementation on 10,000 track miles, FRA also performed a sensitivity analysis in its proposed RIA, using 7,000 miles as a conservative low-number threshold. AAR believes that FRA underestimates the route miles at stake, because it presumably does not account for track miles potentially affected by the currently undeveloped residual risk analysis. Thus, AAR states that it does not know the basis for FRA's assumption that 50 percent of the lines in question would have qualified under that criterion. FRA agrees that it is difficult to estimate the percentage of segments that would have met both tests, because both tests were not fully developed. As noted in its response to the Peabody study, FRA's sensitivity analysis provides a view of what the outcome might have been under the base case had the percentage passing the two tests been higher or lower. Ultimately, regardless of the exact number of miles no longer requiring PTC system implementation, the societal benefits of the final rule are much greater than the societal costs.

AAR also contests statements made at the hearing by those representing some of the shippers, taking issue with the shippers' reliance on the Peabody and Zeta-Tech studies, which AAR asserts was already refuted by the Oliver Wyman study sent to FRA on April 27, 2010. In particular, while the Peabody and Zeta-Tech studies each provide a cost-benefit analysis that included business benefits, Oliver Wyman contends that with the advancements made since the writing of the Zeta-Tech report, this benefit would be ''minimal.''

AAR believes that the shippers' reference to the Zeta-Tech analysis is misplaced, because it analyzed hypothetical PTC systems and hypothetical business benefits. AAR asserts that some of those business benefits have already been achieved through implementation of other systems and that the PTC systems being installed will not enhance the capability to achieve those business benefits. Moreover, according to AAR, the PTC systems currently being installed will lack those business benefits and will likely face many operational inefficiencies, particularly as they relate to braking algorithm changes and the resultant effect on network velocity and capacity constraints. FRA did not include those business benefits in either the analysis of the NPRM or this analysis, and agrees with AAR that it would not have been proper to include those hypothetical benefits in either analysis, as described in more detail above. In addition, AAR contends that any discussions on pricing or common carrier obligations are not appropriate for this forum. FRA described these issues in more detail in Sections III.A and III.B, above.

[5] Calculation: ((3 accidents per year)/(52 accidents per year))/((11,248.43 miles)/(70,000 miles)) = 36.2 percent.

[6] OMB Circular A–4 at 45 (''You should present annualized benefits and costs using real discount rates of 3 and 7 percent.'').

IV. Section-by-Section Analysis

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR).

Proposed Amendments to 49 CFR Part 236

Section 236.1003 Definitions

FRA currently defines PIH materials within the rule text at § 236.1005(b)(1)(i), which some may find difficult to locate. Accordingly, for the purposes of clarity, FRA is adding the definition for PIH materials to the definitions section of subpart I. The inclusion of this definition in § 236.1003 does not change the meaning of the term as understood under § 236.1005(b)(1)(i) or its cross-reference to §§ 171.8, 173.115, and 173.132.

Section 236.1005 Requirements for Positive Train Control Systems

In this final rule, FRA is eliminating the alternative route analysis and the residual risk analysis tests. When initially published in the PTC rule on January 15, 2010, these provisions were included in § 236.1005(b). On September 27, 2010, FRA issued amendments to the PTC rule, moving the text to a new § 236.1020, and providing more clarifying language. However, to ensure continuity and understanding, § 236.1005 contained various cross-references to § 236.1020. As indicated below, FRA is eliminating § 236.1020. Accordingly, FRA is also removing the relevant cross-references in § 236.1005.

AAR has concerns regarding the text of proposed (b)(4). AAR believes that a railroad should still be able to file an RFA to remove a track segment from the PTCIP's implementation schedule if there is passenger service on the line that qualifies the railroad to submit a main line track exclusion addendum (MTEA) under 49 CFR 236.1019. According to AAR, the statement in the first sentence of proposed § 236.1005(b)(4)(i)—that explicitly references the ''cessation of passenger service'' but does not discuss MTEAs—could be interpreted as stating that a PTC system will be required for a line over which no PIH will be transported after 2015 if there is any passenger service, even if the passenger service qualifies for an MTEA. AAR also argues that this paragraph, if literally read, provides that FRA will approve a request for excluding a line segment from the PTC mandate if there is a cessation of passenger service or PIH materials service by December 31, 2015, or a decline in freight traffic below 5 million gross tons over a 2-year period. AAR states that, ''The first issue with proposed (b)(4)(ii) is a repetition of the problem presented by the first sentence of (b)(4)(i), a reference to a cessation of passenger service rather than a reduction to an amount qualifying for a main track exclusion. The second issue with proposed (b)(4)(ii) is the use of 'or.' Under a strict reading of the proposed language, a line with over 5 million gross tons of freight traffic used for TIH and passenger service, for example, would qualify for an exclusion from the PTC mandate if passenger service ceased even if there were no changes in the freight volume and TIH traffic continued.''

In response to these concerns, FRA has clarified the language of paragraph (b)(4) without changing its intended meaning. Paragraph (b)(4)(i) now specifically mentions the approval of an MTEA as one cause for a routing change to allow for approval of an exclusion. Paragraph (b)(4)(ii) now more precisely states the set of conditions necessary to approve an exclusion. Specifically, an exclusion may only be granted where both of the following conditions are established by the railroad to be true as of December 31, 2015: first, that there is no passenger service, or any passenger service that exists is subject to an MTEA; second, that there is no PIH materials traffic or less than 5 million gross tons of freight traffic.

Section 236.1020 Exclusion of track segments for implementation due to cessation of PIH materials traffic

As previously noted, the current PTC rule requires that, for each RFA seeking to exclude a track segment from PTC system implementation due to the cessation of PIH materials traffic, a railroad must satisfy both an alternative route analysis, and eventually a residual risk analysis test, in order to secure FRA's approval. FRA's cost-benefit analysis of the PTC rule indicates that the railroads will incur approximately $20 in PTC costs for each $1 in PTC safety benefits. In its congressional testimony, AAR testified that 2010 was the safest year for America's railroads, that railroads have lower employee injury rates than most other major industries, that only around 4 percent of all train accidents on Class I main lines are likely to be prevented by PTC systems, and that there are many far less costly ways to provide greater improvements in rail safety than through the implementation of PTC systems on lines not required by Congress to be equipped.[7] According to the testimony, if the PTC rule remains unchanged, railroads may be required to spend more than $500 million in the next few years to deploy PTC systems on more than 10,000 miles of rail lines on which neither passengers nor PIH materials will be transported as of December 31, 2015.

FRA recognizes that the railroads have much work to do to have interoperable PTC systems implemented in accordance with the congressional mandate by the December 31, 2015, statutory deadline. FRA also recognizes that the alternative route analysis and residual risk tests could potentially require PTC system implementation at a great cost to the railroads on lines that will not carry PIH materials traffic as of December 31, 2015. Lines that no longer carry PIH materials traffic can still pose significant safety risks associated with other hazardous material traffic on the lines and these safety risks may justify a requirement that the lines be equipped with PTC systems. However, as FRA noted when it last amended the PTC rule (75 FR 59111–59113 (Sept. 27, 2010)), FRA will need to develop an appropriate risk methodology through a separate rulemaking proceeding before it can require PTC systems to be installed on any line that no longer carries PIH materials. FRA has had discussion with members of the railroad industry regarding an appropriate risk methodology but has yet to come up with a reasonable and satisfactory methodology that could form the basis of this further rulemaking. FRA is, therefore, eliminating the two qualifying tests that would potentially require PTC system implementation on lines not specifically mandated by Congress, consistent with Executive Order 13563. To achieve this end, FRA is eliminating § 236.1020. While FRA has removed these analyses from the PTC rule, FRA reserves its statutory and regulatory authority to require PTC system implementation on additional track segments in the future based on risk levels or other rational bases.

V. Regulatory Impact and Notices

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 significant under Executive Order 12866, Executive Order 13563 and DOT policies and procedures. 44 FR 11,034 (Feb. 26, 1979). We have prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this final rule. FRA is

[7] See AAR Congressional Testimony, at 8–9.

removing regulatory provisions that require railroads to meet two tests in order to avoid PTC system implementation on track segments that were used to transport PIH materials traffic in 2008 and carried 5 million gross tons of traffic, but that, as of December 31, 2015, do not transport PIH materials traffic and are not used for intercity or commuter rail passenger transportation that otherwise require PTC system installation under the rule. Substantial cost savings will accrue largely from not installing PTC system wayside components or other mitigations along approximately 10,000 miles of track. Although these rail lines will forgo some risk reduction, the reductions in risk will likely be small since these lines pose a much lower risk of accidents because they generally do not carry passenger trains or PIH materials and generally have lower accident frequency and severity, because the lines have relatively lower traffic volumes than the average segment on which PTC systems will be required, based on FRA's review of the data submitted by AAR. The analysis shows that if the assumptions are correct, the savings to the industry in the form of regulatory relief as proposed far outweigh the cost associated with increased accident exposure.

The largest part of the cost savings benefit comes from reducing the extent of wayside that must be equipped with PTC systems. Some of these lines would have qualified for exemption by passing the two tests contained in the 2010 PTC final rule, while others may not have. In addition, benefits will come from reducing the number of locomotives belonging to Class II and Class III (small) railroads that must be equipped with PTC systems, because they run on Class I railroads' track that will no longer need to be equipped with PTC systems. Although these benefits will be small relative to the wayside equipment savings, they would be large relative to the size of the railroads being impacted. The tables below present the total estimated cost savings benefits of the final rule, assuming installation or additional mitigation measures would no longer be required along 10,000 miles of track. The analysis assumes that 5,000 miles of track would have passed both tests with some mitigation measures being taken, and the remaining 5,000 miles would not have passed both tests and would have required PTC system implementation under the rules in effect before this rulemaking.

BENEFITS (20-YEAR, DISCOUNTED)

Costs avoided	7% Discount	3% Discount
Reduced Mitigation Costs, Including Maintenance	$91,793,822	$121,119,324
Reduced Wayside Costs, Including Maintenance	515,695,631	680,445,643
Reduced Locomotive Costs, Including Maintenance	12,479,834	16,466,785
Total Benefits	619,969,287	818,031,752

Total costs may also be broken down into initial investment and maintenance costs. Although railroads may already have spent money to install and maintain PTC systems, FRA assumes here that those funds have not been spent on the lines considered here, as they tend to be lower volume, lower priority lines, and FRA assumes that the railroads would not install PTC systems on those lines until 2014, at the earliest, in the absence of this rulemaking. FRA estimates that avoiding installation on 10,000 miles would let railroads avoid $300.5 million in initial installation costs (not discounted). Maintenance cost savings would total $366.0 million (discounted at 7%) or $538.9 million (discounted at 3%). Maintenance includes all of the activities and subsequent purchases needed to operate the PTC system over its life-cycle, and to maintain its proper functioning, reliability, and availability. Maintenance includes training, system inspection, testing, adjustments, repair, and replacement of components. Replacement components can be very expensive in processor-based systems with relatively small installed bases, such as PTC. PTC systems are not installed in great enough numbers to justify a processor manufacturer making a processor just for PTC. PTC systems developers must use standard processors, and over time those processors usually become obsolete and are no longer supported or manufactured. Then the PTC system developer must redesign and re-test the PTC system to ensure it will continue to operate safely and reliably with the new processor. The Trade Associations commented that they believe the estimated savings from reduced maintenance costs are too high, and should have been based on 12.5 percent of the value of installed PTC systems, rather than the 15 percent of the value of installed PTC systems used in analyzing both the NPRM and this final rule. For reasons described above, in its response to comments FRA explains its rationale for rejecting the lower estimate of maintenance costs.

Costs associated with the proposed regulatory relief will come from reducing the potential for accident reduction. A substantial part of the accident reduction that FRA expects from PTC systems comes from reducing high-consequence accidents involving passenger trains or the release of PIH materials. FRA believes that the track segments impacted by this final rule pose significantly less risk because they generally do not carry passenger trains or PIH materials and generally have lower accident frequency and severity, as discussed above, because the lines have relatively lower traffic volumes and track speeds than the average segment on which PTC systems are required, based on FRA's review of the data submitted by AAR. The following tables present the total costs of the final rule as well as the breakdown of the costs by element.

COSTS (20-YEAR, DISCOUNTED)

Foregone reductions in	7% Discount	3% Discount
Fatality Prevention	$11,453,106	$16,860,327
Injury Prevention	4,254,484	6,263,104
Train Delay	117,793	173,406
Property Damage	10,163,835	14,962,367
Equipment Cleanup	143,273	210,915

COSTS (20-YEAR, DISCOUNTED)—Continued

Foregone reductions in	7% Discount	3% Discount
Environmental Cleanup	430,995	634,475
Evacuations	138,780	204,301
Total Costs	26,702,267	39,308,896

The 20-year discounted net benefits (subtracting the costs from the benefits) are expected to be $590 million over 20 years, discounted at 7 percent per year; and $780 million over 20 years, discounted at 3 percent per year. The timing of benefits and costs are such that a large benefit in terms of capital investment is avoided in early years, while the benefit of avoided maintenance and the disbenefit (costs) of accidents not avoided would be realized annually in later years. FRA also assessed the sensitivity of the analysis with respect to scenarios in which railroads may only be able to get relief for 7,000 miles of track and in which railroads may get relief on as many as 14,000 miles of track. Each of these assumes that 50% of the track miles would have passed both tests with some mitigation measures being taken, and that the remaining 50% of the track miles would not have passed both tests and would have required PTC system implementation under the current rules. Such scenarios also show net benefits.

Net societal benefits	7% Discount	3% Discount
Expected Case (10,000 miles)	$593,267,020	$778,722,856
High Case (14,000 miles)	793,856,299	1,041,764,269
Low Case (7,000 miles)	442,825,061	581,441,797

Further, the benefit-cost ratios under the scenarios analyzed range between 20:1 and 25:1.

Benefit-cost ratio	7% Discount	3% Discount
Expected Case	23.22	20.81
High Case	22.24	19.93
Low Case	24.69	22.13

FRA also received comments from the Trade Associations saying that FRA understated the costs of the proposed rule, especially by not accounting for business benefits of PTC that would be lost on the affected segments. FRA has reviewed PTCIPs, and at present the only business benefits the railroads are seemingly likely to realize from PTC would result from train pacing. Train pacing benefits are derived from locomotive onboard equipment, and would not be affected by the reduction in wayside component installations. Train pacing is likely to result in fuel savings, but since train pacing will not be affected by this rule, fuel savings will remain unchanged. This is discussed in more detail in the response to comments above.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the impact of this rulemaking on small entities is properly considered, FRA developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, FRA is amending the regulations implementing a provision of RSIA that requires certain passenger and freight railroads to install PTC systems. Specifically, FRA is removing two regulatory requirements that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that carried PIH traffic and 5 million or more gross tons of traffic in 2008 but that will not carry PIH hazardous materials traffic as of December 31, 2015.

FRA is certifying that this final rule will result in ''no significant economic impact on a substantial number of small entities.'' The following section explains the reasons for this certification.

1. Description of Regulated Entities and Impacts

The ''universe'' of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the ''universe'' would be Class III freight railroads that operate on rail lines that are currently required to have PTC systems installed. Such lines are owned by railroads not considered to be small.

The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity,'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity'' is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. Additionally, section 601(5) defines ''small entities'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes ''small entities'' as railroads which meet the line haulage revenue requirements of a Class III railroad.[8] The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[9] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA is using the STB's threshold in its definition of ''small entities'' for this rule.

The final rule impacts Class III railroads that operate on lines of other railroads currently required to have PTC systems installed. To the extent that such host railroads receive relief from such a requirement along certain lines, Class III railroads that operate over those lines would not have to equip their locomotives with PTC system components. FRA believes that elimination of the two tests for relief from the requirement to install PTC systems will result in PTC systems not being installed on track segments totaling over 10,000 miles in length. Approximately five small railroads operate locomotives on lines currently required to be equipped with PTC systems, but that would receive relief under the final rule. In addition, two Class III railroads operate over railroad crossings (diamonds) that intersect tracks required to be equipped with PTC systems in the absence of changes adopted in this final rule. The total of seven affected Class III railroads is not a substantial number of small entities, given that there are 674 small railroads. Under the final rule Class III railroads will avoid equipping 28 locomotives with PTC onboard apparatuses at a cost savings of $55,000 per locomotive initially plus maintenance of the PTC equipment.

As a business model, most small railroads purchase old locomotives being sold by larger railroads, because they have become functionally obsolete for the larger railroads. In the RSAC PTC Working Group discussions leading up to the PTC final rule published in the **Federal Register** on January 15, 2010, the American Short Line & Regional Railroad Association (ASLRRA) representatives asserted that some short lines are operating locomotives with a market value of no more than $75,000, and that it would be very difficult for those railroads to equip their locomotives at a unit cost of $55,000 each. Further, even if the average cost to equip a locomotive is $55,000, it may be more expensive to equip an older locomotive. These railroads will have to develop a new and unique installation for a small number of locomotives that may also have space limitations and that may not be equipped with the more modern mechanisms and design that make it easier to install PTC systems. One or more of the seven affected small railroads may be using such older locomotives. For such a railroad, the cost of equipping a locomotive with an onboard PTC apparatus may be a significant burden. Thus, the relief of that burden provided by the final rule may be a significant benefit for such small entities.

The avoided installation cost will also have a significant beneficial effect on small railroads' annual net income. For instance, if a short line railroad avoids onboard PTC apparatus installation on six locomotives, then the savings would be $330,000. When such a railroad may have annual revenues of $10 million to $20 million, with the profit of that amount ranging between $1 million and $2 million, the avoided installation cost could be between 16.5 percent and 33 percent of that railroad's annual income. This savings could be a significant benefit for an affected small railroad. However, even if all seven of the affected Class III railroads were to receive a significant benefit, seven railroads is not a substantial number of small railroads.

In addition, a Class III railroad will avoid paying for PTC system installation at one railroad-to-railroad crossing, at an initial cost of $80,000 plus annual maintenance. Finally, Class III railroads will avoid operational costs associated with having to reduce operating speeds to cross over two railroad-to-railroad crossings at an annual cost of $43,800. The unit costs presented above for installing PTC systems on locomotives, and at railroad-to-railroad crossings, and the operational costs of operating over a crossing at reduced speed are the values used in the Regulatory Flexibility Analysis of the PTC final rule issued January 15, 2010, and can be found in the docket for that rulemaking. The changes FRA is adopting will benefit the small entities impacted. FRA requested comment on whether the impacts on them would be significant and whether the number of small railroads affected is substantial. The Trade Associations commented that they believe the mileage affected on Class I railroads would be less, and the impact on Class II and Class III railroads also correspondingly less. FRA does not concur with the comments and the information provided by commenters does not provide any rationale against certification that the rule is not expected to impact a substantial number of small entities significantly. The Trade Associations comments actually support the certification by suggesting that the impact on the affected small entities would be less than FRA had estimated. The seven railroads affected by this rule do not represent a substantial number of railroads out of more than approximately 600 Class III railroads.

2. Certification

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FRA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. The sections that contain the current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.275—Processor-Based Systems—Deviations from Product Safety Plan (PSP)—Letters.	20 Railroads	25 letters	4 hours	100
236.18—Software Mgmt Control Plan	184 Railroads	184 plans	2,150 hours	395,600
—Updates to Software Mgmt. Control Plan	90 Railroads	20 updates	1.50 hours	30
236.905—Updates to RSPP	78 Railroads	6 plans	135 hours	810
—Response to Request For Additional Info	78 Railroads	1 updated doc	400 hours	400

[8] *See* 68 FR 24891 (May 9, 2003); 49 CFR part 209, app. C.

[9] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Request for FRA Approval of RSPP Modification	78 Railroads	1 request/modified RSPP	400 hours	400
236.907—Product Safety Plan (PSP)—Dev	5 Railroads	5 plans	6,400 hours	32,000
236.909—Minimum Performance Standard—Petitions For Review and Approval.	5 Railroads	2 petitions/PSP	19,200 hours	38,400
—Supporting Sensitivity Analysis	5 Railroads	5 analyses	160 hours	800
236.913—Notification/Submission to FRA of Joint Product Safety Plan (PSP).	6 Railroads	1 joint plan	25,600 hours	25,600
—Petitions For Approval/Informational Filings	6 Railroads	6 petitions	1,928 hours	11,568
—Responses to FRA Request For Further Info. After Informational Filing.	6 Railroads	2 documents	800 hours	1,600
—Responses to FRA Request For Further Info. After Agency Receipt of Notice of Product Development.	6 Railroads	6 documents	16 hours	96
—Consultations	6 Railroads	6 consults	120 hours	720
—Petitions for Final Approval	6 Railroads	6 petitions	16 hours	96
—Comments to FRA by Interested Parties	Public/RRs	7 comments	240 hours	1,680
—Third Party Assessments of PSP	6 Railroads	1 assessment	104,000 hours	104,000
—Amendments to PSP	6 Railroads	15 amendments	160 hours	2,400
—Field Testing of Product—Info. Filings	6 Railroads	6 documents	3,200 hours	19,200
236.917—Retention of Records			160,000 hrs.	
—Results of tests/inspections specified in PSP	6 Railroads	3 documents/records	160,000 hrs.; 40,000 hrs	360,000
—Report to FRA of Inconsistencies with frequency of safety-relevant hazards in PSP.	6 Railroads	1 report	104 hours	104
236.919—Operations & Maintenance Man				
—Updates to O & M Manual	6 Railroads	6 updated docs	40 hours	240
—Plans For Proper Maintenance, Repair, Inspection of Safety-Critical Products.	6 Railroads	6 plans	53,335 hours	320,010
—Hardware/Software/Firmware Revisions	6 Railroads	6 revisions	6,440 hours	38,640
236.921—Training Programs: Development	6 Railroads	6 Tr. Programs	400 hours	2,400
—Training of Signalmen & Dispatchers	6 Railroads	300 signalmen; 20 dispatchers.	40 hours; 20 hours	12,400
236.923—Task Analysis/Basic Requirements: Necessary Documents.	6 Railroads	6 documents	720 hours	4,320
—Records	6 Railroads	350 records	10 minutes	58
SUBPART I—NEW REQUIREMENTS				
236.1001—RR Development of More Stringent Rules Re: PTC Performance Stds.	46 Railroads	3 rules	80 hours	240
236.1005—Requirements for PTC Systems				
—Temporary Rerouting: Emergency Requests	46 Railroads	50 requests	8 hours	400
—Written/Telephonic Notification to FRA Regional Administrator.	46 Railroads	50 notifications	2 hours	100
—Temporary Rerouting Requests Due to Track Maintenance.	46 Railroads	760 requests	8 hours	6,080
—Temporary Rerouting Requests That Exceed 30 Days.	46 Railroads	380 requests	8 hours	3,040
236.1006—Requirements for Equipping Locomotives Operating in PTC Territory				
—Reports of Movements in Excess of 20 Miles/RR Progress on PTC Locomotives.	46 Railroads	45 reports + 45 reports	8 hours + 170	8,010
—PTC Progress Reports	46 Railroads	35 reports	16 hours	560
236.1007—Additional Requirements for High Speed Service				
—Required HSR–125 Documents with approved PTCSP.	46 Railroads	2 documents	3,200 hours	6,400
—Requests to Use Foreign Service Data	46 Railroads	1 request	8,000 hours	8,000
—PTC Railroads Conducting Operations at More than 150 MPH with HSR–125 Documents.	46 Railroads	2 documents	3,200 hours	6,400
—Requests for PTC Waiver	46 Railroads	1 request	1,000 hours	1,000
236.1009–Procedural Requirements				
—Host Railroads Filing PTCIP or Request for Amendment (RFAs).	46 Railroads	1 PCTIP; 20 RFAs	535 hours; 320 hours	6,935
—Jointly Submitted PTCIPs	46 Railroads	7 PTCIPs	267 hours	1,869
—Notification of Failure to File Joint PTCIP	46 Railroads	1 notification	32 hours	32
—Comprehensive List of Issues Causing Non-Agreement.	46 Railroads	1 list	80 hours	80
—Conferences to Develop Mutually Acceptable PCTIP.	46 Railroads	2 conf. calls	60 minutes	2
—Type Approval	46 Railroads	2 Type Appr.	8 hours	16
—PTC Development Plans Requesting Type Approval.	46 Railroads	20 Ltr. + 20 App; 2 Plans	8 hrs/1600 hrs; 6,400 hours	44,960
—Notice of Product Intent w/PTCIPs (IPs)	46 Railroads	1 NPI; 1 IP	1,070 + 535 hrs	1,605
—PTCDPs with PTCIPs (DPs + IPs)	46 Railroads	1 DP	2,135 hours	2,135
—Updated PTCIPs w/PTCDPs (IPs + DPs)	46 Railroads	1 IP; 1 DP	535 + 2,135 hrs	2,670
—Disapproved/Resubmitted PTCIPs/NPIs	46 Railroads	1 IP + 1 NPI	135 + 270 hrs	405
—Revoked Approvals—Provisional IPs/DP	46 Railroads	IP + 1 DP	135 + 535 hrs	670
—PTC IPs/PTCDPs Still Needing Rework	46 Railroads	1 IP + 1 DP	135 + 535 hrs	670
—PTCIP/PTCDP/PTCSP Plan Contents—Documents Translated into English.	46 Railroads	1 document	8,000 hours	8,000
—Requests for Confidentiality	46 Railroads	46 ltrs; 46 docs	8hrs.; 800 hrs	37,168
—Field Test Plans/Independent Assessments—Req. by FRA.	46 Railroads	460 field tests; 2 assessments.	800 hours	369,600
—FRA Access: Interviews with PTC Wrkrs.	46 Railroads	92 interviews	30 minutes	46
—FRA Requests for Further Information	46 Railroads	8 documents	400 hours	3,200

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
236.1011–PTCIP Requirements—Comment	7 Interested Groups	1 rev.; 40 com	143 + 8 hrs.	463
236.1015—PTCSP Content Requirements & PTC System Certification				
—Non-Vital Overlay	46 Railroads	3 PTCSPs	16,000 hours	48,000
—Vital Overlay	46 Railroads	40 PTCSPs	22,400 hours	896,000
—Stand Alone	46 Railroads	1 PTCSP	32,000 hours	32,000
—Mixed Systems—Conference with FRA regarding Case/Analysis.	46 Railroads	3 conferences	32 hours	96
—Mixed Sys. PTCSPs (incl. safety case)	46 Railroads	1 PTCSP	28,800 hours	28,800
—FRA Request for Additional PTCSP Data	46 Railroads	23 documents	3,200 hours	73,600
—PTCSPs Applying to Replace Existing Certified PTC Systems.	46 Railroads	40 PTCSPs	3,200 hours	128,000
—Non-Quantitative Risk Assessments Supplied to FRA.	46 Railroads	40 assessments	3,200 hours	128,000
236.1017—PTCSP Supported by Independent Third Party Assessment.	46 Railroads	1 assessment	8,000 hours	8,000
—Written Requests to FRA to Confirm Entity Independence.	46 Railroads	1 request	8 hours	8
—Provision of Additional Information After FRA Request.	46 Railroads	1 document	160 hours	160
—Independent Third Party Assessment: Waiver Requests.	46 Railroads	1 request	160 hours	160
—RR Request for FRA to Accept Foreign Railroad Regulator Certified Info.	46 Railroads	1 request	32 hours	32
236.1019—Main Line Track Exceptions				
—Submission of Main Line Track Exclusion Addendums (MTEAs).	46 Railroads	138 MTEAs	160 hours	22,080
—Passenger Terminal Exception—MTEAs	46 Railroads	23 MTEAs	160 hours	3,680
—Limited Operation Exception—Risk Mit	46 Railroads	46 plans	160 hours	7,360
—Ltd. Exception—Collision Hazard Anal	46 Railroads	23 analyses	1,600 hours	36,800
—Temporal Separation Procedures	46 Railroads	11 procedures	160 hours	1,760
236.1021—Discontinuances, Material Modifications, Amendments—Requests to Amend (RFA) PTCIP, PTCDP or PTCSP.	46 Railroads	23 RFAs	160 hours	3,680
— Review and Public Comment on RFA	7 Interested Groups	7 reviews + 20 comments	3 hours; 16 hours	341
236.1023—PTC Product Vendor Lists	46 Railroads	46 lists	8 hours	368
—RR Procedures Upon Notification of PTC System Safety-Critical Upgrades, Rev., Etc.	46 Railroads	46 procedures	16 hours	736
—RR Notifications of PTC Safety Hazards	46 Railroads	150 notifications	16 hours	2,400
—RR Notification Updates	46 Railroads	150 updates	16 hours	2,400
—Manufacturer's Report of Investigation of PTC Defect.	5 System Suppliers	5 reports	400 hours	2,000
—PTC Supplier Reports of Safety Relevant Failures or Defective Conditions.	5 System Suppliers	150 reports + 150 rpt. copies.	16 hours + 8 hours	3,600
236.1029—Report of On-Board Lead Locomotive PTC Device Failure.	46 Railroads	1,012 reports	96 hours	97,152
236.1031—Previously Approved PTC Systems				
—Request for Expedited Certification (REC) for PTC System.	46 Railroads	3 REC Letters	160 hours	480
—Requests for Grandfathering on PTCSPs	46 Railroads	3 requests	1,600 hours	4,800
236.1035—Field Testing Requirements	46 Railroads	230 field test plans	800 hours	184,000
—Relief Requests from Regulations Necessary to Support Field Testing.	46 Railroads	46 requests	320 hours	14,720
236.1037—Records Retention				
—Results of Tests in PTCSP and PTCDP	46 Railroads	1,012 records	4 hours	4,048
—PTC Service Contractors Training Records	46 Railroads	22,080 records	30 minutes	11,040
—Reports of Safety Relevant Hazards Exceeding Those in PTCSP and PTCDP.	46 Railroads	4 reports	8 hours	32
—Final Report of Resolution of Inconsistency	46 Railroads	4 final reports	160 hours	640
236.1039—Operations & Maintenance Manual (OMM): Development.	46 Railroads	46 manuals	250 hours	11,500
—Positive Identification of Safety-critical components.	46 Railroads	120,000 i.d. components	1 hour	120,000
—Designated RR Officers in OMM. regarding PTC issues.	46 Railroads	92 designations	2 hours	184
236.1041—PTC Training Programs	46 Railroads	46 programs	400 hours	18,400
236.1043—Task Analysis/Basic Requirements: Training Evaluations.	46 Railroads	46 evaluations	720 hours	33,120
—Training Records	46 Railroads	8,560 records	10 minutes	1,427
236.1045—Training Specific to Office Control Personnel	46 Railroads	64 trained employees	20 hours	1,280
236.1047—Training Specific to Loc. Engineers & Other Operating Personnel				
—PTC Conductor Training	30 Railroads	8,000 trained conductors	3 hours	24,000

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292 or Ms. Kimberly Toone at 202–493–6132 or via email at the following addresses: *robert.brogan@dot.gov; kimberly.toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements

should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov mailto:victor.angelo@fra.dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this direct final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism.'' *See* 64 FR 43,255 (Aug. 4, 1999). As discussed earlier in the preamble, this final rule would provide regulatory relief from the mandated implementation of PTC systems.

Executive Order 13132 requires FRA to develop a 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'' are 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, the agency may not issue a regulation with 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 the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts state law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this final rule would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this final rule would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule will have preemptive effect. Section 20106 of Title 49 of the United States Code provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to § 20106. Furthermore, the Locomotive Boiler Inspection Act (49 U.S.C. 20701–20703) has been held by the U.S. Supreme Court to preempt the entire field of locomotive safety.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (''FRA's Procedures'') (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditures by state, local or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation with base year of 1995) or more in any one year. The value equivalent of $100 million in CY 1995, adjusted annual for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $141.3 million. The assessment may be included in conjunction with other assessments, as it is in this rulemaking.

FRA is publishing this final rule to provide additional flexibility in standards for the development, testing, implementation, and use of PTC systems for railroads mandated by RSIA to implement PTC systems. The RIA provides a detailed analysis of the costs and benefits of the final rule. This analysis is the basis for determining that this rule will not result in total expenditures by State, local or tribal governments, in the aggregate, or by the private sector of $141.3 million or more in any one year. The costs associated with this final rule are reduced accident reduction from an existing rule.

G. Energy Impact

Executive Order 13211 requires federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of

Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant regulatory action'' within the meaning of Executive Order 13211.

H. Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document), if submitted on behalf of an association, business, labor union, etc.). Interested parties may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *www.regulations.gov*.

List of Subjects in 49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA hereby amends chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 236—[AMENDED]

■ 1. 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, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Amend § 236.1003 by adding the definition ''PIH Materials'' to paragraph (b) to read as follows:

§ 236.1003 Definitions.

* * * * *

(b) * * *

PIH Materials means materials poisonous by inhalation, as defined in §§ 171.8, 173.115, and 173.132 of this title.

* * * * *

■ 3. Amend § 236.1005 by redesignating paragraph (b)(4)(ii) as paragraph (b)(4)(iii); revise paragraph (b)(4)(i) and add a new paragraph (b)(4)(ii) to read as follows:

§ 236.1005 Requirements for Positive Train Control systems.

* * * * *

(b) * * *

(4) * * *

(i) *Routing changes.* In a PTCIP or an RFA, a railroad may request review of the requirement to install PTC on a track segment where a PTC system is otherwise required by this section, but has not yet been installed, based upon changes in rail traffic such as reductions in total traffic volume to a level below 5 million gross tons annually, cessation of passenger service or the approval of an MTEA, or the cessation of PIH materials traffic. Any such request shall be accompanied by estimated traffic projections for the next 5 years (e.g., as a result of planned rerouting, coordinations, or location of new business on the line).

(ii) FRA will approve the exclusion requested pursuant to paragraph (b)(4)(i) of this section if the railroad establishes that, as of December 31, 2015:

(A) No passenger service will be present on the involved track segment or the passenger service will be subject to an MTEA approved in accordance with 49 CFR 236.1019; and

(B) No PIH traffic will be present on the involved track segment or the gross tonnage on the involved track segment will decline to below 5 million gross tons annually as computed over a 2-year period.

* * * * *

§ 236.1020 [Removed and reserved]

■ 4. Remove and reserve § 236.1020.

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

Joseph C. Szabo,

Administrator.

[FR Doc. 2012–11706 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120501426–2426–01]

RIN 0648–BB98

Temporary Rule To Delay Start Date of 2012–2013 South Atlantic Black Sea Bass Commercial Fishing Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule to delay the start date of the 2012–2013 fishing season for the commercial black sea bass sector of the snapper-grouper fishery from June 1, 2012 to July 1, 2012 to allow for the implementation of the final rule for Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A). The final rule for Amendment 18A modifies black sea bass accountability measures, establishes an endorsement program for black sea bass pot fishermen, modifies size limits for commercial and recreational black sea bass, and improves fisheries data collection in the for-hire sector of the snapper-grouper fishery. Amendment 18A also updates the black sea bass rebuilding plan and modifies the acceptable biological catch (ABC) for black sea bass. The intent of Amendment 18A is to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery. The final rule implementing management measures in Amendment 18A is not expected to be effective until after June 1, the start of the black sea bass fishing season. Therefore, this temporary rule is necessary to delay the start of the commercial black sea bass season to allow NMFS to finalize rulemaking for Amendment 18A. The intent of this temporary rule is to reduce the rate of black sea bass harvest and help ensure black sea bass landings remain below the annual catch limit (ACL).

DATES: This temporary rule is effective May 14, 2012, through December 31, 2012.

ADDRESSES: Electronic copies of Amendment 18A and the documents in support of this temporary rule, which include a supplemental environmental assessment, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.*

FOR FURTHER INFORMATION CONTACT: Kate Michie, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *Kate.Michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the snapper-grouper fishery of the South Atlantic under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The final rule for Amendment 17B to the FMP (75 FR 82280, December 30, 2010), effective on January 31, 2011, implemented ACLs and accountability measures (AMs) to end overfishing of black sea bass and prevent future overfishing from occurring, as required by National Standard 1 of the Magnuson-Stevens Act. The ACLS and AMs implemented through Amendment 17B for black sea bass resulted in in-season closures for the commercial and recreational sectors as well as a reduction in the recreational ACL for the 2011–2012 fishing year.

A new stock assessment for black sea bass was completed in October 2011, and indicates the stock is no longer overfished, but is not yet fully rebuilt. According to 2009 and 2010 data, black sea bass were undergoing overfishing ''to a minor degree.'' Although the black sea bass stock is increasing in magnitude, too many black sea bass were being removed from the population too quickly in 2009 and 2010. As overfishing ends for black sea bass, and its biomass increases, the commercial ACL is likely to be met earlier each fishing season as a result of the increased amount of the stock available for harvest. This result could increase the likelihood of derby-style harvesting, which is undesirable from economic, vessel safety, and social perspectives. Derby-style harvesting, also termed ''the race for fish,'' consists of a short duration of increased effort where harvest is maximized prior to reaching an ACL. Additionally, in 2009 and 2010, vessels increased their fishing effort into the black sea bass segment of the commercial snapper-grouper sector as other snapper-grouper species became subject to more stringent restrictions. This increase in effort resulted in the commercial ACL being reached relatively early in the fishing season. During the June 2009 to May 2010 fishing year, the commercial quota was met in December 2009. During the June 2010 to May 2011 fishing year, the commercial quota was met in October 2010, and during the June 2011 to May 2012 fishing year, the commercial quota was met in July 2011.

Currently, the black sea bass rebuilding plan specifies a constant catch rebuilding strategy as the stock rebuilds, which also contributes to increased rates of harvest and early in-season closures as more fish become available through rebuilding efforts. In an effort to extend fishing opportunities for black sea bass further into the fishing year, and to improve fisheries data reporting in the for-hire sector of the snapper-grouper fishery, the Council voted to approve Amendment 18A at its December 2011 meeting.

The Council submitted Amendment 18A for Secretarial Review on January 5, 2012. Amendment 18A was partially approved on May 2, 2012. The Secretary of Commerce (Secretary) disapproved one management measure in Amendment 18A regarding the transferability of black sea bass pot endorsements. The Council and NMFS will address this action in a separate amendment.

Amendment 18A contains a new ABC for black sea bass, which takes into account the degree to which the 2011 stock assessment report indicates overfishing was occurring in 2009 and 2010, as well as the magnitude of landings during the 2011–2012 fishing year. The Council's Scientific and Statistical Committee (SSC) was provided with data from the NMFS Southeast Fisheries Science Center (SEFSC), in November 2011, from the 2011–2012 fishing year (June–August data), which indicated the commercial ACL of 309,000 lb (140,160 kg), gutted weight, had been exceeded by at least 5 percent, and the recreational ACL of 409,000 lb (185,519 kg), gutted weight, had been exceeded by at least 10 percent. Since recreational data received by the SSC at that time was still incomplete (the recreational quota was reached in October, and September and October data were not yet available), the SSC supported a new ABC for black sea bass which assumes the commercial and recreational combined ACL was exceeded by 50 percent in the 2011–2012 fishing year. Furthermore, the SSC stated the ABC should be specified for only the 2012–2013 and 2013–2014 fishing seasons, and indicated an assessment update should be conducted before any adjustments are made to the ACL after the 2013–2014 fishing season.

Currently, commercial black sea bass fishermen harvest black sea bass with great efficiency as biomass has increased under rebuilding efforts, and effort in the black sea bass pot segment of the snapper-grouper fishery has grown. These factors lead to the fishery reaching the commercial ACL very quickly once the season opens. When fish are landed quickly, there is a greater chance the fishery will exceed its ACL, and overfishing can occur. Because black sea bass are undergoing overfishing and are currently subject to a rebuilding plan, maintaining landings below the ACL is imperative to allow biomass to increase to target levels within the rebuilding timeframe. Under the rebuilding plan, the black sea bass stock must be rebuilt by 2016.

Amendment 18A contains several management measures intended to slow the rate of harvest of black sea bass and help ensure black sea bass landings remain below the ACL to allow the biomass to increase. The management measures also address the derby-style fishery (the race to fish) that has developed in the commercial sector. Commercial management measures contained in Amendment 18A include: A black sea bass pot endorsement program; a limit on the number of black sea bass pot tags issued to each endorsement holder each permit year; a requirement to return black sea bass pots to shore at the end of each fishing trip; a 1,000–lb (454–kg), gutted weight, commercial trip limit for black sea bass; and an increase in the minimum commercial size limit for black sea bass.

Need for This Temporary Rule

At its March 2012 meeting, the Council requested that, if Amendment 18A is approved, NMFS promulgate emergency regulations to delay the start date of the commercial black sea bass fishing season until after Amendment 18A is implemented, but no later than July 1, 2012. The Secretary partially approved Amendment 18A on May 2, 2012, and implementation of Amendment 18A will occur after June 1, 2012.

Delaying the start of the commercial sector until the actions in Amendment 18A become effective would reduce the rate of harvest and help to ensure the commercial black sea bass sector closes in a timely manner. Delaying the start of the 2012–2013 fishing season to allow Amendment 18A to become effective will also reduce the risk of potential safety-at-sea issues presented when fishermen under pressure to harvest a profitable portion of the quota fish in foul weather or other unsafe conditions. Therefore, delaying the start of the fishing season to allow for the implementation of the measures in Amendment 18A will ease derby fishing conditions and relieve some of the pressure on fishermen to make unsafe trips, preserve a significant economic opportunity that otherwise might be foregone, and prevent further overfishing of black sea bass from occurring that would result from the delay in implementation of Amendment 18A.

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists. This emergency rule is promulgated under these criteria. Specifically, to promulgate an

emergency rule, NMFS' policy guidelines require that an emergency:

(1) Result from recent, unforeseen events or recently discovered circumstances; and

(2) Present serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The unforeseen circumstance is that NMFS did not foresee the 2011 stock assessment report would indicate overfishing was occurring in 2009 and 2010, and that the magnitude of landings during the 2011–2012 fishing year would be so high. To compound these circumstances, the Council submitted Amendment 18A for Secretarial Review on January 5, 2012, which provides little time for the Amendment 18A rulemaking to be implemented prior to the June 1 start of the commercial fishing season. The notice of availability for Amendment 18A published on January 31, 2012 (77 FR 4754), with a 60-day comment period ending April 2, 2012. The proposed rule for Amendment 18A did not publish until March 23, 2012 (77 FR 16991), with a 30-day comment period ending April 23, 2012, due to confusion over one action in the amendment (transferability of black sea bass endorsements). This action was ultimately not included in the proposed rule and was disapproved by the Secretary. The Council is developing a separate amendment to address this disapproved action.

If the start of the commercial fishing season is not delayed to allow time for the implementation of provisions in Amendment 18A, the snapper-grouper fishery will be faced with serious conservation and management problems. Under current management practices, the commercial black sea bass sector experiences derby-style harvesting, also termed ''the race for fish.'' Derby fishing has led to the ACL being reached and exceeded in a short amount of time, contributing to the overfishing of black sea bass. Derby fishing also produces safety-at-sea issues due to the short periods of increased effort where vessels compete to maximize harvest prior to the ACL being reached. Amendment 18A will implement an endorsement program for black sea bass pot fishermen, which will reduce the race to fish, because fewer permit holders will be fishing for the same quota and the number of pots used to harvest black sea bass will be restricted. Also, the 1,000-lb (454-kg), gutted weight, commercial trip limit will restrict the amount of fish harvested per trip. Therefore, the management measures contained in Amendment 18A, intended to end derby-style fishing, will reduce the risk of black sea bass overfishing and eliminate the associated safety-at-sea issues, consistent with National Standards 1 and 10 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(1) and (10)).

During the past three fishing seasons, derby fishing resulted in commercial sector closures on December 20, 2009; October 7, 2010; and July 15, 2011. These short derby commercial fishing seasons caused negative social and economic impacts as too many black sea bass entered the market at one time. Market glut can drive the price of the fish down and compromise the quality of the fish. If the commercial sector opens on June 1, 2012, without the provisions in Amendment 18A, NMFS expects that the 2012–2013 fishing season will be shorter than the 45-day 2011–2012 fishing season. Delaying the start of the commercial fishing season to allow for the implementation of the Amendment 18A endorsement program will allow the commercial fishing season to remain open longer, because there will be fewer fishermen harvesting black sea bass with pots, the number of pots that can be fished will be reduced, and the catch per trip will be restricted to 1,000 lb (454 kg), gutted weight. A longer fishing season will also allow for better monitoring of landings data and a better estimate of the date for an inseason commercial closure.

Additionally, delaying the start of the commercial fishing season is necessary to ensure the black sea bass rebuilding plan remains on track. A short commercial fishing season caused by derby conditions can increase the risk of exceeding the ACL and overfishing could occur. National Standard 1 of the Magnuson-Stevens Act states that ''Conservation and Management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the United States fishing industry'' (16 U.S.C. 1851(a)(1)). Black sea bass landings must stay below the ACL to allow biomass to increase to target levels within the rebuilding timeframe.

Finally, the immediate benefit of implementing this emergency action outweighs the value of advance notice and public comment. The final rule for Amendment 18A, currently under review, would implement management measures for black sea bass that would reduce the rate of harvest and help to ensure the commercial black sea bass sector closes in a timely manner. Not implementing this temporary rule would likely lead to negative biological and economic impacts for the snapper-grouper fishery due to the delay in implementing the management measures contained in Amendment 18A. As stated above, if the commercial sector were to open before the effort-limiting provisions contained in Amendment 18A are implemented, the commercial ACL would likely be reached very quickly and the commercial sector could close even earlier than last year. Too many black sea bass flooding the market simultaneously creates market gluts which can affect overall profitability for snapper-grouper fishermen and create unstable market conditions for dealers. Management measures contained in Amendment 18A should help lengthen the commercial fishing season for black sea bass, stabilize the market, and preserve a significant economic opportunity for snapper-grouper fishermen.

Industry representatives have expressed support for this temporary rule for emergency action. Many black sea bass commercial fishermen also fish for vermilion snapper, which opens on July 1, 2012. Opening black sea bass and vermilion snapper on the same day would allow fishery participants to maximize fishery opportunities for both species concurrently.

Measures Contained in this Temporary Rule

This temporary rule delays the start date of the 2012–2013 commercial fishing season for black sea bass from June 1, 2012 to July 1, 2012. Opening the commercial fishing season July 1 instead of June 1 could allow the commercial fishing season to stay open until sometime between August and October, instead of sometime between July and September. The recreational fishing season is not changed and will start on June 1, 2012.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to reduce the rate of South Atlantic black sea bass harvest and help ensure black sea bass landings remain below the ACL and is consistent with the Magnuson-Stevens Act and other applicable laws.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because they are impracticable and contrary to the public interest. This temporary rule delays the start date of the 2012–2013 commercial fishing season for black sea bass from June 1, 2012 to July 1, 2012, to allow NMFS to finalize and implement the final rule for Amendment 18A. Amendment 18A contains several management measures intended to slow the black sea bass harvest rate and help ensure black sea bass landings remain below the ACL to allow the biomass to increase. The management measures also address the derby-style fishery (i.e., the race to fish) that has developed in the commercial sector.

If the start date to the snapper-grouper fishery is not delayed, then the fishery will likely experience negative biological and economic impacts. As stated above, if the commercial sector opens before the effort-limiting provisions contained in Amendment 18A are implemented, the commercial ACL will likely be reached very quickly, and the commercial sector could close even earlier than last year. Too many black sea bass flooding the market simultaneously gluts markets, which can affect the overall profitability for snapper-grouper fishermen and create unstable market conditions for dealers. NMFS expects management measures contained in Amendment 18A will help lengthen the commercial fishing season for black sea bass, which should help to stabilize the market and preserve a significant economic opportunity for snapper-grouper fishermen. Moreover, if the start date is not delayed, the derby fishing conditions would continue to exist until NMFS is able to implement the provisions of Amendment 18A. As mentioned above, this style of fishing may lead to safety-at-sea issues due to the short periods of increased effort where vessels compete to maximize harvest prior to the ACL being reached.

Therefore, NMFS needs to implement this temporary rule as soon as possible to provide notice to commercial black sea bass pot fishermen that the commercial fishing season will be delayed until July 1, 2012, and to allow them time to revise their business strategies.

For similar reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3). Delaying this rules effectiveness will allow the black sea bass commercial sector to open on July 1, 2012, rather than on June 1, 2012. The earlier start to the black sea bass commercial season could result in a race to fish, which in turn could result in safety-at-sea issues, as well as glut the market for black sea bass by flooding it with product and depressing prices. Finally, delaying this rule's effectiveness may increase the risk that black sea bass will continue to be harvested at a fast pace and could result in black sea bass exceeding its ACL. Accordingly, delaying the rule's effectiveness is contrary to the public interest, and the 30-day delay in effectiveness is hereby waived.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 9, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.30, paragraph (e) is suspended and paragraph (f) is added to read as follows:

§ 622.30 Fishing years.

* * * * *

(f) *South Atlantic black sea bass*—(1) The fishing year for the black sea bass bag limit specified in § 622.39(d)(1)(vii) is June 1 through May 31.

(2) The fishing year for the black sea bass quota specified in § 622.42(e)(5) is July 1 through May 31.

[FR Doc. 2012–11661 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120417412–2412–01]

RIN 0648–BB90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final temporary rule; request for comments.

SUMMARY: This final temporary rule, issued pursuant to NMFS' authority to issue interim rules under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implements interim measures to reduce overfishing of gray triggerfish in the Gulf of Mexico (Gulf). This rule reduces the gray triggerfish commercial quota (commercial annual catch target (ACT)), commercial and recreational annual catch limits (ACLs), and recreational ACT. Additionally, this final temporary rule revises the recreational accountability measures (AMs) for gray triggerfish. At its April meeting, the Gulf of Mexico Fishery Management Council (Council) requested NMFS promulgate interim measures to reduce overfishing of gray triggerfish. The rule will be effective for 180 days, unless superseded by subsequent rulemaking, although NMFS may extend the rule's effectiveness for an additional 186 days pursuant to the Magnuson-Stevens Act. The intended effect of this final temporary rule is to reduce overfishing of the gray triggerfish resource in the Gulf while the Council develops permanent management measures.

DATES: This final temporary rule is effective May 14, 2012, through November 10, 2012. Comments may be submitted through June 13, 2012.

ADDRESSES: You may submit comments on the final temporary rule identified by ''NOAA–NMFS–2012–0085'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the ''Instructions'' for submitting comments.
- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0085'' in the search field and click on ''search.'' After you locate the document ''Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gray Triggerfish Management Measures,'' click the ''Submit a Comment'' link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10 MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of documents supporting this proposed rule, which include a draft environmental impact statement and a regulatory flexibility analysis, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–824–5305 or email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. The Magnuson-Stevens Act provides the legal authority for the promulgation of interim regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing of stocks and to minimize bycatch and bycatch mortality to the extent practicable.

Status of the Gray Triggerfish Stock

The last Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for gray triggerfish was completed in 2006 (SEDAR 9). SEDAR 9 indicated that the gray triggerfish stock was both overfished and possibly undergoing overfishing. Subsequently, Amendment 30A to the FMP established a gray triggerfish rebuilding plan beginning in the 2008 fishing year (73 FR 38139, July 3, 2008). In 2011, a SEDAR update stock assessment for gray triggerfish determined that the gray triggerfish stock was still overfished and was additionally undergoing overfishing. The 2011 update assessment indicated the 2008 gray triggerfish rebuilding plan had not made adequate progress toward ending overfishing and rebuilding the stock as described in the rebuilding plan in Amendment 30A to the FMP. NMFS informed the Council of this determination in a letter dated March 13, 2012. NMFS also requested that the Council work to end overfishing of gray triggerfish immediately and to revise the gray triggerfish stock rebuilding plan.

The Council has begun developing more permanent measures to end overfishing and rebuild the gray triggerfish stock in Amendment 37 to the FMP. However, these measures will not likely be implemented until the end of the 2012 fishing year or at the beginning of the 2013 fishing year. Therefore, on April 19, 2012, the Council requested that NMFS implement a temporary rule to reduce overfishing of gray triggerfish on an interim basis.

Management Measures Contained in This Final Temporary Rule

The Council's Scientific and Statistical Committee (SSC) reviewed the gray triggerfish 2011 SEDAR update assessment. The SSC recommended that the gray triggerfish 2012 and 2013 fishing years acceptable biological catches (ABC) be set at 305,300 lb (138,346 kg), whole weight. Based on this recommendation, the commercial and recreational ACLs and ACTs for the gray triggerfish need to be updated.

According to the National Standard 1 guidelines (74 FR 3178, January 16, 2009), ACLs are defined as the highest level of landings for either a stock or fishing sector that is acceptable to maintain an adequate stock size and to prevent overfishing. ACTs are targets that provide a buffer, less than the ACL, to account for management uncertainty. ACLs and ACTs may both be implemented as triggers for AMs. AMs are management measures implemented to ensure ACLS are not exceeded or mitigate if ACLs are exceeded. AMs may be implemented to reduce overfishing or prevent overfishing from occurring.

In Amendment 30A to the FMP, the Council established a 21 percent commercial and 79 percent recreational allocation of the gray triggerfish ABC. These allocations are used to set the commercial and recreational sector-specific ACLs. The ABC recommended by the SSC is 305,300 lb (138,482 kg), whole weight. Based on the allocations established in Amendment 30A to the FMP, this rule sets, on a temporary basis, a reduced commercial ACL of 64,100 lb (29,075 kg), whole weight, and a reduced recreational ACL of 241,200 lb (109,406 kg), whole weight.

NMFS applied the ACL/ACT control rule to the sector ACLs to set the sector-specific ACTs. This control rule was developed and utilized in the final rule implementing the Generic Annual Catch Limit Amendment (76 FR 82044, December 29, 2011) so that the Council and NMFS could take into account management uncertainty when assigning ACLs and ACTs. The control rule specified a buffer between the commercial ACL and commercial ACT of 5 percent, and between the recreational ACL and recreational ACT of 10 percent. Therefore, this rule sets, on a temporary basis, the commercial ACT (commercial quota) at 60,900 lb (27,624 kg), whole weight, and the recreational ACT at 217,100 lb (98,475 kg), whole weight. Currently, there is a commercial gray triggerfish quota in place, which functions as the commercial ACT.

To reduce the risk of overfishing, Amendment 30A to the FMP established gray triggerfish AMs. For the commercial sector, there are currently both in-season and post-season AMs. The in-season AM closes the commercial sector after the commercial quota (commercial ACT) is reached or projected to be reached. Additionally, if the commercial ACL is exceeded despite the quota closure, the post-season AM would reduce the following year's

commercial quota (commercial ACT) by the amount of the prior-year's commercial ACL overage.

For the recreational sector, there is currently no in-season AM, but a post-season AM is in effect. For the recreational sector, if the recreational ACL is exceeded, NMFS will reduce the length of the following year's fishing season by the amount necessary to ensure that recreational landings do not exceed the recreational ACT during the following year.

In 2008, recreational landings exceeded both the recreational ACT and ACL. In 2009, the recreational ACT was exceeded. However, in 2010, recreational landings did not exceed the ACT or ACL. Reduced 2010 recreational landings may be attributable to fishery closures that were implemented that year as a result of the Deepwater Horizon MC252 oil spill. Based on recent trends in recreational landings and anticipated future recreational effort, the Council and NMFS have determined that there is a reasonable probability that the recreational sector will exceed its ACL in future years. The implementation of an in-season AM would reduce this risk. This temporary rule establishes an in-season AM for the recreational sector to prohibit the recreational harvest of gray triggerfish (a recreational sector closure) after the recreational ACT is reached or projected to be reached. This in-season AM would provide an additional level of protection to ensure that the recreational ACL is not exceeded and that the risk of overfishing will be reduced.

Future Action

NMFS has determined that this temporary final rule is necessary to reduce overfishing of gray triggerfish in the Gulf. This rule will be effective for not more than 180 days after publication, as authorized by section 305(c) of the Magnuson-Stevens Act. This temporary final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule. NMFS and the Council will continue to develop more permanent measures to reduce overfishing of gray triggerfish through Amendment 37 to the FMP.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final temporary rule is necessary to reduce overfishing and to achieve OY for the gray triggerfish component of the reef fish fishery in the Gulf EEZ and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Providing prior notice and the opportunity for public comment would be contrary to the public interest because delaying the implementation of this rule is likely to allow overfishing of gray triggerfish to continue. Gray triggerfish are currently undergoing overfishing and are overfished, so any delay would undermine the intent of the rule. If this rule is not implemented immediately, NMFS will likely be required to implement more severe reductions in gray triggerfish catch limits, which could have higher socioeconomic impacts on Gulf reef fish fishermen. NMFS was not able to implement this rulemaking any sooner because the scientific review of the most recent gray triggerfish stock assessment, upon which this rule is based on, was only recently completed. Any delay in the implementation of these revised catch limits would allow harvest to continue at a level that is not consistent with National Standard 1 of the Magnuson-Stevens Act. Comments submitted on this final temporary rule through the Federal e-Rulemaking Portal: *http://www.regulations.gov* and received by NMFS no later than June 13, 2012, will be considered during any possible subsequent rulemaking relative to this final temporary rule, such as an extension of this rule.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 9, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.42, paragraph (a)(1)(vi) is suspended and paragraph (a)(1)(vii) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(vii) Gray triggerfish—60,900 lb (27,624 kg), round weight.

* * * * *

■ 3. In § 622.49, paragraph (a)(2) is suspended and paragraph (a)(17) is added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(17) *Gray triggerfish*—(i) *Commercial sector.* If commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACT (commercial quota) specified in § 622.42(a)(1)(vii), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. In addition, if despite such closure, commercial landings exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACT (commercial quota) for that following year by the amount the prior-year ACL was exceeded. The commercial ACL is 64,100 lb (29,075 kg), round weight.

(ii) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACT, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. In addition, if despite such closure, recreational landings exceed the recreational ACL, the AA will file a notification with the Office of the Federal Register to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACT for that following fishing year. The recreational ACT is 217,100 lb (98,475 kg), round weight. The recreational ACL is 241,200 lb (109,406 kg), round weight.

* * * * *

[FR Doc. 2012–11663 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120330235–2014–01]

RIN 0648–BC04

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Delmarva Access Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule under its authority to implement emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency rule closes the Delmarva Scallop Access Area (Delmarva) to all scallop vessels for the remainder of the 2012 scallop fishing year and reallocates unused 2012 limited access full-time vessel (FT) scallop Delmarva trips to the Closed Area I Access Area (CAI). Closing Delmarva will prevent high levels of fishing effort in this area, which could have reduced long-term scallop biomass and yield from Delmarva, and could have compromised the overall success of the scallop area rotational management program. This emergency action reallocates 2012 Delmarva trips to CAI to ensure equity in trip allocations and to minimize economic impacts of closing the Delmarva. The New England Fishery Management Council (Council) recommended that NMFS take this action quickly in order to minimize any fishing effort in the Delmarva, and ensure the industry is aware of any allocation adjustments as soon as possible before CAI opens on June 15, 2012.

DATES: Effective June 13, 2012, through November 10, 2012. Comments must be received by June 13, 2012.

ADDRESSES: The Environmental Assessment (EA) is available by request from: Daniel S. Morris, Acting Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2276, or via the Internet at *http://www.nero.noaa.gov.*

You may submit comments on this document, identified by NOAA–NMFS–2012–0071, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0071 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Daniel S. Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Emergency Rule to Close the Delmarva Access Area.''
- *Fax:* (978) 281–9135; Attn: Emily Gilbert.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The management unit of the Atlantic sea scallop fishery ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) was first established in 1982 and now includes a number of amendments and framework adjustments that have revised and refined the fishery's management. One of the foundations of the Scallop FMP's success is the rotational area management program. Area-based management was developed in 1998 in the scallop fishery and expanded through 2004. The rotational area management program was formally established in 2004 in the Scallop FMP. Under rotational management, areas that contain large concentrations of small scallops are closed before the scallops are harvested or disturbed, then the areas re-open when scallops are larger, producing more yield-per-recruit. These areas are known as scallop ''access areas.''

There are currently five scallop access areas: Closed Area I (CAI), Closed Area II, Nantucket Lightship, Delmarva, and Hudson Canyon. When an area is re-opened, scallop vessels are allocated a certain number of trips into the area, based on their permit type. The limited access fleet, the larger ''trip boat'' fleet, consists of full-time (FT), part-time, and occasional vessels. Each vessel is allocated a certain number of trips, with FT vessels receiving area-specific trips and the other two types of limited access vessels receiving a fewer number of trips that are not specific to a certain access area. The smaller ''day boat'' fleet, known as the limited access general category individual fishing quota (IFQ) fleet, receive a fleet-wide allocation into most access areas. Once the fleet-wide trip allocation in a given access area is harvested, the area closes to IFQ vessels and the vessels can continue to fish their IFQ in other access areas or locations within the scallop management unit.

In order to manage the access areas' schedules, and to identify new potential access areas, the Council develops biennial framework adjustments, which also set the overall scallop allocations and expected fishing effort for upcoming fishing years (FYs). The specifications contained in these framework adjustments use the most recent scallop survey information available at the time of development to project scallop biomass levels in various access areas for future years (e.g., estimates from 2010 surveys are used to determine the specifications for FYs 2011 and 2012). As a result, projections of scallop biomass for the second year of a framework are often outdated for some areas: Updated surveys may show more or less harvestable scallop biomass in a given area than originally anticipated.

The scallop FY begins on March 1 of each year and the FY 2012 scallop specifications are the second-year specifications developed by the Council through Framework Adjustment 22 to the Scallop FMP (Framework 22) (76 FR 43774, July 21, 2011). Framework 22 set the access area schedules for FYs 2011 and 2012 based on 2010 survey results.

In an attempt to account for unexpected changes in biomass levels, as well as optimize yield, Framework 22 included a new way to allocate access area trip for FT vessels: Although all FT vessels received a total of 4 access area trips in FY 2011 and in FY 2012, not all trips were allocated to the same access areas. Instead, Framework 22 included ''split trip'' allocations for FT vessels, where half the fleet is allocated a trip in one access area and half the fleet is allocated a trip in another access area. This split trip allocation scheme was successful in FY 2011. However, as explained in greater detail below, results from recent 2011 surveys show that the ''split trip'' access area allocations based on these older surveys should be adjusted for FY 2012 for the Delmarva and CAI access areas.

New Information Regarding Current Scallop Biomass Levels in Delmarva

At the Council's Scallop Plan Development Team (PDT) meeting on January 5, 2012, staff from the Northeast Fisheries Science Center, the Virginia Institute of Marine Science (VIMS), and the University of Massachusetts School for Marine and Atmospheric Science presented results from their 2011 Delmarva scallop resource surveys. All three surveys, which represent the best available scientific information regarding the status of the scallop resource, indicated that the scallop biomass in Delmarva is substantially lower than expected for FY 2012.

The Delmarva estimates ranged from 5.1 M lb (2,313 mt) to 13.0 M lb (5,897 mt), depending on the type of survey used (i.e., dredge or video) and when the survey was conducted. For example, the VIMS dredge survey that estimated biomass of 5.1 M lb (2,313 mt) was the last survey of the area; it was conducted in October 2011, when nearly all vessels had fully fished their Delmarva trips, and also when scallop meat weights are at their lowest. For comparison, based on the 2010 survey estimates, Framework 22 allocated the FT vessel fleet 5.6 M lb (2,540 mt) and 2.8 M lb (1,270 mt) of scallops from this area in FYs 2011 and 2012, respectively. In 2011, all 313 FT vessels with permits in the Atlantic sea scallop fishery were each allocated one trip (18,000 lb/trip; 8,165 kg/trip) into Delmarva; in FY 2012, only 156 FT vessels were allocated one trip each into Delmarva. The recent survey information is supported by what was observed during FY 2011 fishing activity in Delmarva, where catch rates were much lower in the area than anticipated, and much lower than catch rates in other areas. Catch rates in Delmarva declined from about 2,000 lb (907 kg) per day in the start of FY 2011 to less than 1,000 lb (454 kg) per day later in the FY. The new survey results indicate that the scallop biomass in Delmarva is not high enough to support the FY 2012 allocations set through Framework 22.

New Information Regarding Current Scallop Recruitment Levels in Delmarva

In addition to identifying lower-than-expected scallop biomass in Delmarva, the 2011 results also indicated that this access area is one of the few areas in the Mid-Atlantic where there is relatively strong recruitment, meaning an abundance of small scallops (1.57 to 2.95 in (40 to 75 mm)) that have reached maturity (i.e., are able to reproduce). These small scallops will benefit from additional protection through closure of the area—a closure will allow them to grow larger (to the 3.5-in (89-mm) minimum size for harvest) and produce more scallops before they are harvested. Recruitment helps define the health of the resource in terms of reproduction and growth, and helps predict future abundance levels of harvestable scallops. Recruitment levels also help shape the area rotation program for future years.

New Information Regarding Current Scallop Biomass Levels in CAI

The 2011 surveys estimated scallop biomass in CAI between 28–40 M lb (12,700–18,144 mt), depending on the survey results used and what time of year the surveys took place. These levels are higher than Framework 22's 2011 projections based on the 2010 survey results, which estimated CAI biomass to be closer to 26 M lb (11,793 mt) in 2011, and indicate that more fishing effort could be allocated to CAI in FY 2012. In FY 2011, the scallop fishery harvested about 8.8 M lb (3,992 mt) of scallops from this area and Framework 22 allocated 157 FT vessels one trip each (18,000 lb/trip; 8,165 kg/trip) into CAI for FY 2012.

Based on the most recent information on the status of the scallop resource described above, NMFS takes this emergency action to close Delmarva for the remainder of FY 2012, and reallocates any unused FT trips from Delmarva to CAI in FY 2012. By closing Delmarva, this action will prevent localized overfishing of the scallop resource, protect scallop recruitment, and improve future scallop yield in the Mid Atlantic. By reallocating FT vessel trips into a more productive scallop access area, this action ensures equity across the scallop fleet for FY 2012 and supports overall scallop harvest levels that are consistent with Framework 22.

Continued fishing in Delmarva during FY 2012 would result in longer fishing trips that damage scallop resources and increase the risk of overharvesting the available resource.

Based on FY 2011 catch rates, if Delmarva did not close in FY 2012, catch rates could continue to be around 1,000 lb (454 kg) per day, compared to about 2,200 lb (998 kg) per day or higher in CAI, which would result in longer fishing trips that damage scallop resources and increase the risk of overharvesting the available resource. Although some vessels received Delmarva allocations at the start of FY 2012, which began March 1, 2012, very few limited access vessels have fished their FY 2012 trips in the area to date due to the poor conditions. However, if Delmarva remained open for the remainder of FY 2012, FT vessels with Delmarva ''split trip'' allocations would eventually take their trips or risk losing a full access area trip. As previously mentioned, unlike other scallop vessels that have non-specific allocations that can be fished in Delmarva or elsewhere, FT limited access vessels must fish their trips in specific areas, or trade their trips with other FT vessels to fish in other areas. If this area remained open with these low catch rates, the 156 FT vessels with Delmarva allocations would not likely be able to trade their Delmarva trips for other more productive areas. Without any other alternatives, these vessel operators would have continued to fish in Delmarva until they reached the 18,000-lb (8,165 kg) limit, which would have required much longer trips to catch their full possession limit. This would have increased the amount of time and area that the scallop fishing gear is in contact with the sea floor (i.e., increased area swept), which in turn would have resulted in negative impacts on the scallop resource due to increased fishing pressure.

In addition, if Delmarva remained open in FY 2012, vessel operators would have taken longer fishing trips due to lower scallop biomass levels, which would negatively impact scallop recruitment in the short and medium term, and could reduce the long-term biomass and yield from Delmarva and the Mid-Atlantic overall. Vessel operators would have continued to fish in Delmarva until they reached the 18,000-lb (8,165 kg) limit, which will which negatively impact scallop recruitment due to the potential harvest and disturbance of the small-sized and less mature scallops. The success of the entire scallop access area rotational management program depends on timely openings and closing of access

areas in order to protect scallop recruitment and optimize yield. This is particularly true in the Mid-Atlantic, where recruitment has been well below average for several years. By closing Delmarva for the remainder of FY 2012, this action avoids the potential for localized overfishing of the area and promotes future yield from the area by protecting the small scallops located in the area.

Reallocating unused FY 2012 Delmarva trips to CAI would ensure equity across the scallop fleet, while not compromising the scallop resource.

The reallocation to CAI of unused FT vessel trips from Delmarva is not expected to result in excessive fishing in CAI for FY 2012, based on the most recent survey results. By reallocating to CAI any unused FT vessel trips (up to 156) currently assigned to Delmarva, this action increases the total number of CAI trips from 157 to up to 313. The increase in CAI trips results in an FY 2012 CAI allocation of 5.6 M lb (2,540 mt) of scallops, an area with an estimated scallop biomass of between 28–40 M lb (12,700–18,144 mt). This increase doubles the amount of fishing effort that was initially allocated to CAI at the start of FY 2012, but the recent surveys show that the scallop biomass in this area can support this level of fishing.

The FT Delmarva trips that will be converted to CAI once this action is effective include any undeclared FY 2012 trips and all FY 2012 Delmarva compensation trips. If a vessel began an FY 2012 Delmarva scallop trip, ended the trip prior to landing its full possession limit, and has received a subsequent FY 2012 Delmarva compensation trip in order to harvest the remainder of the possession limit, that compensation trip will also be converted to CAI upon the effective date of this action. Any vessel that has gained a Delmarva trip through a trip exchange will also have that trip converted to a CAI trip. In addition, this action reallocates the unused Delmarva FY 2012 observer set-aside (up to 36,000 lb; 16.3 mt) to CAI to account for the increase in FT trips.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that the issue of closing Delmarva meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstance. Although the last survey in Delmarva was completed in October 2011, the results of the three 2011 Delmarva scallop resource surveys were not available until the January 5, 2012, Scallop PDT meeting. There is now evidence that there is significantly less biomass in Delmarva than projected through Framework 22. In addition, the surveys show that small scallops, or recruitment, are present within Delmarva and that there is not substantial recruitment elsewhere in the Mid-Atlantic.

The emergency also presents serious conservation and management problems in the fishery. Allowing fishing effort in Delmarva in FY 2012 with the current low biomass levels could result in negative impacts on recruitment and could reduce the long-term biomass and economic yield from this area. Since there has been well below average recruitment in the Mid-Atlantic for several years, protecting scallop recruitment in this area is essential for the future success of area rotation to maximize yield and economic benefits to the scallop fishery.

Additionally, catch rates are much lower for Delmarva than Framework 22 originally projected, and lower than other access areas that are currently open to vessels for FY 2012. When catch rates fall, vessels must fish longer to get the same total catch, increasing area swept, or time that fishing gear is in the water. Increased area swept has greater impacts on bycatch, habitat, and protected resources, as well as increased costs for fishing vessels due to longer trips.

The increase in fishing costs would also have negative impacts on the producer surplus and net economic benefits from the fishery. Assuming catch rates in FY 2012 are similar on average to catch rates in FY 2011, CAI trips would cost about $16,500 per FT vessel, about half as much as trip costs estimated for that vessel to take a Delmarva trip. Total fleet net revenue for those 156 vessels, assuming no used trips, which would each be reallocated a CAI trip instead of a Delmarva trip is estimated to be $25.5 million, $2.6 million more than if Delmarva had remained open and those vessels were required to fish their trips in that area.

These potentially serious conservation and management consequences of high fishing effort in Delmarva in FY 2012 justify the emergency closure of this area.

NMFS also finds that this emergency can be addressed through emergency regulations for which the immediate benefits to both the scallop resource and those who depend on it outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. Although the Council has the authority to develop a management action to modify the scallop access area trip allocations, an emergency action can be developed and implemented by NMFS more swiftly than a Council action that is subject to procedural and other requirements not applicable to the Secretary. If the normal regulatory process is used to revise the trip allocations (e.g., considering ''pay back'' measures for vessels with unused FY 2012 Delmarva trips during the development of Framework 24, which would set the specifications for FYs 2013–2014) it would take substantially longer for the revised trip allocations to be implemented, could result in unintended impacts to future FY annual catch limits (ACLs), and could result in triggering economically harmful management actions that otherwise may have been avoided. By implementing these measures through emergency action, it is possible to maintain overall catch allocations for scallops for the remainder of FY 2012 and avoid unnecessary adverse biological and economic impacts.

This emergency action closes Delmarva in FY 2012 for 150 days (after a 30-day delay in effectiveness), and NMFS anticipates extending this action for an additional 186 days, which would carry these measures into May 2013. This emergency action is expected to be replaced by Framework Adjustment 24 to the Scallop FMP (Framework 24), which sets the specifications for FYs 2013 and 2014. The Council is currently developing Framework 24 management measures but it is likely Delmarva would continue to be closed for FY 2013. NMFS expects that Framework 24

measures will be implemented in May 2013, if approved, which would coincide with the expiration of this emergency action.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

This action provides benefits to both the scallop resource and the scallop fishery by not jeopardizing the success of the access area program in future years, not compromising future scallop biomass levels and subsequent scallop harvest, and ensuring that some members of the limited access scallop fleet will not be inequitably subjected to fewer economic benefits than others. Specifically, by closing the Delmarva for the remainder of FY 2012, this action avoids jeopardizing the success of the access area program in future years by protecting scallop recruitment in the Mid-Atlantic and avoiding localized overfishing. In addition, by reallocating unused FT Delmarva trips (up to 156 trips) into CAI in FY 2012, this action avoids potential inequity in FY 2012 allocations and ensures that the limited access scallop fleet would not risk exceeding its sub-ACL in FY 2013, if vessels allocated Delmarva trips were compensated in FY 2013, rather than FY 2012. This also avoids the potential for the limited access fleet to be subjected to potential days-at-sea deductions in FY 2014 to account for any overage of their FY 2013 ACL. In addition, this action minimizes the likelihood of sea turtle interactions in the Mid-Atlantic, which are known to begin in June, due to longer Delmarva fishing trips. This action did not allow for prior public comment because the review process and determination could not have been completed before Delmarva opened on March 1, 2012, due to the inherent time constraints associated with the Council's rulemaking process to adjust FY 2012 allocations already specified through Framework 22. The results of the three 2011 Delmarva scallop resource surveys were not available until the January 5, 2012, Scallop PDT meeting, and thus there was not enough time for NMFS to complete a rulemaking through the Council's process under the Magnuson-Stevens Act before the Delmarva area opened to fishing on March 1, 2012. This action is undertaken at the request of the Council and is supported by the Fisheries Survival Fund, an organization that represents a large portion of the scallop industry, and that is an active participant in the development of scallop fishery management measures. The Council urged that NMFS implement this action quickly in order to minimize any fishing effort in the Delmarva, and ensure the industry is aware of any allocation adjustments before CAI opens on June 15, 2012. Had this action been further delayed past the start of FY 2012 to account for public comment, it is possible that FT vessels, uncertain whether or not they would receive CAI trips instead of their Delmarva trips, would have fished in the Delmarva when the meat weights would be highest (i.e., during the first few months of the fishing year), which would have negative implications on the recruitment in the area.

In the interest of receiving public input on this action, the EA analyzing this action will be made available to the public and this temporary final rule solicits public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 9, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.58, paragraph (f) is added to read as follows:

§ 648.58 Rotational Closed Areas.

(f) *Delmarva Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N	74°50′ W
DMV2	38°10′ N	74°00′ W
DMV3	37°15′ N	74°00′ W
DMV4	37°15′ N	74°50′ W
DMV1	38°10′ N	74°50′ W

■ 3. In § 648.59, paragraphs (a) and (b)(5)(i) are suspended, and paragraph (b)(5)(iii) is added to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(5) * * *

(iii) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c).

* * * * *

■ 4. In § 648.60:

■ a. Paragraphs (a)(3)(i)(B)(*2*), (a)(3)(i)(C)(*2*), (a)(3)(i)(D)(*2*), (d)(1)(ii), (d)(1)(iv), and (e)(1)(ii) are suspended; and

■ b. Paragraphs (a)(3)(i)(B)(*5*), (a)(3)(i)(C)(*5*), (a)(3)(i)(D)(*4*), (d)(1)(vi), and (e)(1)(iv) are added to read as follows:

§ 648.60 Sea scallop access area program requirements.

(a) * * *

(3) * * *

(i) * * *

(B) * * *

(*5*) In fishing year 2012, each full-time vessel shall have a total of four access

area trips and is subject to the following seasonal trip restrictions specified in paragraph (a)(3)(i)(B)(*4*) of this section. All full-time vessels shall receive one trip into the Closed Area II Access Area and one trip into the Hudson Canyon Access Area. Each vessel shall also receive an additional two access area trips that must be allocated in one of the following combinations: Two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one additional trip in the Hudson Canyon Access Area; or one trip in the Nantucket Lightship Access Area and an additional trip in the Hudson Canyon Access Area. These allocations shall be determined by the Regional Administrator through a random assignment and shall be made publically available prior to the start of the 2012 fishing year. A full description of the random assignment process for FY 2012 is outlined in Section 2.4.2 of Framework 22 to the Scallop Fishery Management Plan.

(*i*) If a full-time vessel was allocated, declared, and fully harvested a 2012 fishing year Delmarva Access Area trip, as originally allocated under Framework Adjustment 22 management measures, prior to the Delmarva Access Area closure implemented under emergency action authority, it will not receive a 2012 fishing year Closed Area I Access Area trip once the Delmarva Access Area closes under emergency action. If the vessel terminated a 2012 fishing year Delmarva Access Area trip early and received a Delmarva Access Area compensation trip fish the remainder of its allowed possession limit, as specified in § 648.60(c), the compensation trip will reallocated to Closed Area I Access Area trip once the Delmarva Access Area closes under emergency action.

(*ii*) [Reserved]

(C) * * *

(*5*) For the 2012 fishing year, a part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Hudson Canyon Access Area; two trips in the Closed Area I Access Area; one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Closed Area I Access Area and one trip in the Hudson Canyon Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Hudson Canyon Access Area. Part-time vessels are subject to the seasonal trip restrictions specified in paragraph (a)(3)(i)(C)(*4*) of this section.

(D) * * *

(*4*) For the 2012 fishing year, an occasional scallop vessel may take one trip in the Hudson Canyon Access Area, or one trip in the Closed Area I Access Area, or one trip in the Closed Area II Access Area, or one trip in the Nantucket Lightship Access Area.

* * * * *

(d) * * *

(1) * * *

(vi) *Closed Area I Access Area.* For the 2011 and 2012 fishing years, the observer set-asides for the Closed Area I Access Area are 111,540 lb (51 mt) and 72,000 lb (33 mt), respectively.

* * * * *

(e) * * *

(1) * * *

(iv) *2012:* Hudson Canyon Access Area, Closed Area I Access Area, Closed Area II Access Area, and Nantucket Lightship Access Area.

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[FR Doc. 2012–11670 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 93
Monday, May 14, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–6; NRC–2010–0291]

Filing a Renewed License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is denying a petition for rulemaking (PRM) submitted by Raymond Shadis and Mary Lampert on behalf of Earth Day Commitment/Friends of the Coast, Beyond Nuclear, Seacoast Anti-Pollution League, C–10 Research and Education Foundation, Pilgrim Watch, New England Coalition, and joined in by New Hampshire State Representative Robin Reed (the petitioners). The petitioners requested that the NRC amend its regulations to accept a license renewal application (LRA) no sooner than 10 years before the expiration of the current license and to apply the revised rule to all LRAs for which the NRC has not issued a final safety evaluation report. The petitioners also requested a suspension of all new license renewal activity until the rulemaking is decided. After reviewing the petition, the NRC is denying the petition.

ADDRESSES: Please refer to Docket ID NRC–2010–0291 when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search on Docket ID NRC–2010–0291. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *The NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section VI of this document, Availability of Documents.
- *The NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margaret Stambaugh, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7069; email: *Margaret.Stambaugh@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Modifying the 20-Year Application Timeframe
III. Ongoing and Future License Renewal Actions
  A. Suspending All Ongoing and Future License Renewal Application Reviews
  B. Applying a 10-Year Timeframe to All Ongoing and Future License Renewal Application Reviews
  C. Petition Statements and Comments Referencing the Seabrook Nuclear Generating Station, Unit 1 (Seabrook Unit 1), License Renewal Application
IV. Public Comments on the Petition
V. Determination of Petition
VI. Availability of Documents

I. Background

The NRC received the petition on August 17, 2010, and assigned it Docket No. PRM–54–6. The NRC published a notice of receipt of the petition and request for public comment in the **Federal Register** (FR) on September 27, 2010 (75 FR 59158).

The petitioners stated that the NRC's current regulation in Title 10 of the Code of Federal Regulations (10 CFR) 54.17(c) is unduly non-conservative with respect to its effect on the accuracy and completeness of LRAs, public participation, changing environmental considerations, aging analysis and management, regulatory follow-through, National Environmental Policy Act (NEPA) compliance, and changing regulations. The petitioners stated that they seek to restore some margin of conservatism by halving the lead time on LRAs from 20 to 10 years.

The petitioners raised the following seven issues in support of their request that the NRC revise 10 CFR 54.17(c):

1. The NRC conducted the rulemaking for 10 CFR 54.17, ''Filing of Application,'' more than 15 years ago, and it could not have foreseen changes with respect to economic and regulatory shifts that have led to an industry-wide shift of focus from decommissioning to power uprates and license renewals. Such changes have affected the dynamics of license renewal aging analysis and management.
2. The rulemaking for 10 CFR 54.17(c) proceeded without sufficient consideration of the hearing rights of affected persons.
3. Under 10 CFR 54.17(c), licensees and the NRC can press to untenable lengths of time the ability to predict the following:
   a. Aging deterioration of systems;
   b. Alternative energy sources that may be more available in the future; and
   c. Various other factors related to plant security and the environment.
4. Failure rates for systems, structures, and components (SSCs) are nonlinear, so licensees are unable to accurately predict aging-related failures.
5. A 20-year timeframe exacerbates the NRC staff's and licensees' difficulty in tracking license renewal commitments.
6. Regulatory changes over a 20-year period, from application to onset of the period of extended operation, will result in grandfathered non-compliance issues.
7. The 20-year timeframe allowed by 10 CFR 54.17(c) conflicts with NEPA. This conflict results in environmental reviews of unduly limited scope and unreasonably limits potential alternatives.

Section II, ''Modifying the 20-Year Application Timeframe,'' of this document describes in detail each of the seven issues. Section II also documents the NRC's responses to these issues.

The petitioners also requested that the NRC suspend all ongoing reviews of

LRAs and that it apply the 10-year timeframe requirement to all ongoing and future LRA reviews. In addition, the petitioners and some public comment letters provide statements related to the license renewal application for Seabrook, Unit 1. Section III, ''Ongoing and Future License Renewal Actions,'' of this document contains the NRC's responses to these requests and statements.

II. Modifying the 20-Year Application Timeframe

Issue 1

The petitioners stated that the NRC last updated 10 CFR 54.17 in 1995, before sweeping changes in NRC oversight and before economic and regulatory shifts that enabled unprecedented changes in ownership and an industry-wide shift of focus from anticipated plant decommissioning to power uprates and license renewals. The petitioners stated that the rulemaking cannot have contemplated how these changes have affected the dynamics of license renewal aging analysis and aging management planning over a period of 40 years (20 years of the current license, plus 20 years of the extended period of operation). The petitioners claimed that the rule is antiquated and obsolete and must be reconsidered.

The petitioners stated that, of 32 license renewals granted, none were filed 20 years in advance of license expiration and that there is only one exception among the 14 LRAs under consideration and filed in the last few years—Seabrook Unit 1. The petitioners stated that NextEra Seabrook Nuclear LLC (NextEra) has provided no credible justification for its very early filing of an LRA. The petitioners stated that the great majority of licensees have filed applications for license renewal within 10 years of the original license expiration without any apparent negative consequences. The petitioners believe that this experience is a clear demonstration that a lead time of more than 10 years is unnecessary and of little benefit. The petitioners argued that filing, reviewing, and granting LRAs more than 10 years in advance of the original license expiration can have negative consequences.

NRC Response to Issue 1

The NRC recognizes that it last revised 10 CFR part 54, ''Requirements for renewal of operating licenses for nuclear power plants,'' in 1995 but disagrees that the age of the rule negatively affects regulatory effectiveness or plant safety. The petitioners provided no evidence or analysis demonstrating that regulatory changes or corporate restructuring have negatively affected the NRC staff's ability to review LRAs or the industry's ability to manage aging-related degradation at nuclear power plants. Furthermore, the petitioners presented no evidence or analysis for the assertion that LRAs submitted more than 10 years before expiration have resulted in negative consequences.

In its 1991 Statements of Consideration for 10 CFR 54.17(c), the Commission considered the appropriate period for applicants to submit applications for license renewal (Power Plant License Renewal, Final Rule, 56 FR 64963; December 13, 1991). The NRC established the 20-year timeframe to balance the need to collect sufficient operating history data to support an LRA with the needs of a utility to plan for the replacement of retired nuclear power plants in the event of an unsuccessful LRA. The Statements of Consideration also discussed the NRC's finding that the lead time for building new electric generation facilities (alternatives to the proposed action) is 10–14 years, depending on the technology. In addition, the Commission considered that the NRC staff review would add time to the process. Thus, the NRC found that a 20-year application timeframe provided a reasonable and flexible timeframe for licensees to perform informed business planning. The petitioners did not provide any reasoning to dispute this previous consideration by the Commission but instead introduced and relied on the assumption that a rule must be reconsidered because it is over 15 years old.

The petitioners cited Seabrook Unit 1 as the only case out of 32 license renewals where an applicant filed 20 years in advance of its license expiration. This statement is incorrect because, as of the date of the petition, nine reactor units were granted exemptions from 10 CFR 54.17(c), enabling the licensees to submit applications more than 20 years in advance of their license expiration. Similarly, the NRC disagrees with the petitioners' assertion that ''the great majority of licensees have filed applications for license renewal within 10 years of the original license expiration,'' as most (43 of the 61) units with renewed licenses at the date of the petition, filed their applications earlier than 10 years before the original license expiration. Nevertheless, neither statement contradicted the NRC's original basis for its consideration in the rule.

Therefore, the arguments provided by the petitioners for this issue do not provide sufficient justification for the NRC to revise the rule. In particular, the petitioners did not present any new information that would contradict the Commission's previous considerations when it established the license renewal rule or demonstrate that sufficient reason exists to modify the current regulations.

Issue 2

The petitioners asserted that, by renewing the license of a nuclear power station 20 years in advance of the licensed extended period of operation, the NRC removes, to the distance of a full generation, the opportunity for an adjudicatory hearing. They contend that a future generation of affected residents, visitors, and commercial interests would be unable or unprepared to speak for themselves. The petitioners further stated that ''10 CFR 54.17(c) introduces the question of whether the action proposed is obtaining the license or entering into an extended period of operation 20 years hence.'' They argue that ''the safety and environmental ramifications; the physical impact on affected persons begins 20 years away.'' They contended that this renders the permission so far removed in time from the implementation as to provide an intellectual disconnect or, in effect, void legal notice.

NRC Response to Issue 2

The petitioners pointed out that renewing an application up to 20 years in advance means that some future residents, visitors, and commercial interests that relocate near the plant during the period of extended operation would not have had the opportunity to participate in the hearing process associated with the LRA review. However, the interests of those future affected persons would be sufficiently represented by those currently located in the area. Any impacts from plant operation on persons currently in the area of the plant are expected to be the same or representative of those impacts on persons who will be located near the plant in the future. It is also an untenable legal standard to provide a hearing opportunity for unknown future residents, visitors, and commercial interests, as it would delay the hearing process or deprive persons currently affected of a timely hearing opportunity. Further, the future residents, visitors, and commercial interests located near the plant may avail themselves of the petition process set forth in 10 CFR 2.206, ''Request for action under this subpart,'' which allows for a request

that an existing license be modified, suspended, or revoked. Future residents, visitors, and commercial interests can also raise generic issues by requesting modification of the NRC's regulations under 10 CFR 2.802, ''Petition for rulemaking.''

The petition statements in Issue 2 do not provide sufficient justification for the NRC to revise the rule.

Issue 3

The petitioners stated that 10 CFR 54.17(c) allows licensees and the NRC staff to press to untenable lengths of time the unproven ability to predict the aging and deterioration of SSCs. The petitioners also claimed that 10 CFR 54.17(c) promotes failure of the LRA to encompass the potential effects of an environment that is arguably changing at an unprecedented and unpredictable rate. As a result, the petitioners questioned whether a rise in ocean temperatures in the future would eventually lead to additional impacts, such as an increase in species affected by the thermal discharge plume or cooling intake. The petitioners also pointed out that ''more environmentally benevolent alternative energy sources'' may be more available in the future (e.g., photovoltaic solar and wind power) but cannot be credibly projected over 20 years. In addition, the petitioners raised the future uncertainty of the global threat of terrorism and its impact on security and the availability of offsite storage for spent fuel and low-level radioactive waste. The petitioners noted that the predicted failure rates for complex systems tend to increase exponentially with respect to the length of time until the prediction matures.

NRC Response to Issue 3

Under Issue 3, the petitioners argued that the LRA fails to encompass the potential effects of a changing environment, and then raised several issues of concern stemming from the length of time allowed by 10 CFR 54.17(c). The examples range from aging degradation to environmental concerns to terrorism and security. The petitioners' issues related to aging management are similar to those raised under Issue 4; therefore, the NRC will address this aspect of the petitioners' concern in its response to that issue. Likewise, the petitioners' environmental concerns as well as the broader concern of a changing environment are similar to the NEPA issues raised under Issue 7; the NRC will address the environmental questions in its response to that issue. This response to Issue 3 addresses the remaining questions related to future uncertainty related to acts of terrorism.

While security of the nuclear facilities the NRC regulates has always been a priority, the terrorist attack of September 11, 2001, brought heightened scrutiny and spurred more stringent physical security requirements. The NRC staff regularly inspects and enforces against these security requirements as part of its oversight role, regardless of a plant's status with respect to license renewal. Moreover, acts of terrorism are not aging-related issues and are, therefore, outside the scope of license renewal hearings. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI–04–36, 60 NRC 631, 638–40 (2004). Therefore, where the petitioners raised questions regarding the license renewal review's ability to encompass uncertainties associated with future threats and developments related to acts of terrorism, such concerns are addressed by separate NRC requirements for physical security (10 CFR Part 73) and are not related to the rules and regulations pertaining to license renewal under 10 CFR part 54.

The petitioners did not present new information in Issue 3 that would demonstrate that sufficient reason exists to modify the current regulations.

Issue 4

The petitioners stated that submitting an application for license renewal at midterm of the current license finds the licensee at a time in SSC service life when, in industry experience, few failures are observed and, generally, those that are observed are episodic or anomalous and cannot be readily plotted as a trend for predictive purposes. The period of increased failure rates due to design, manufacturing, and construction defects has passed and is irrelevant to aging management in the proposed extended period of operation. The petitioners stated that the anticipated end-of-design life and aging issues have barely begun to emerge. Therefore, little or no plant-specific information on how a given plant will age is available to be trended, provide lessons, or otherwise illuminate the path forward. The petitioners continued that it is generally observed that for many SSCs the information flow rates increase rapidly in the fourth quarter and toward the end of a license. They argued that this SSC reliability progression is well known and often illustrated in the so-called ''Bath Tub Curve,'' and corrosion risk is a function of time. As an example, the petitioners contended that the Beaver Valley Power Station containment issue provides an example of operating experience emerging at a late date in a way that affected license renewal.

Additionally, the petitioners included the example that Vermont Yankee Nuclear Power Station also provides a series of later-life structural failures. The petitioners stated that it is appropriate, from a regulatory audit standpoint, to wait until data on the applicable failure rate and observed aging phenomena are in hand before attempting time-limited aging analysis or aging management planning; less than 10; not less than 20 years in advance of operating license expiration.

NRC Response to Issue 4

The petitioners asserted that a plant with only 20 years of operating history will not have gathered sufficient plant-specific aging data to make an informed decision about license renewal. The Commission considered this issue in the 1991 rulemaking promulgating the license renewal rule. In the Statements of Consideration from 1991, the Commission stated that a minimum of 20 years provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation (56 FR 64963; December 13, 1991).

With respect to the petitioners' claim that the licensees and the NRC cannot prove the ability to predict the aging and deterioration of SSCs in the future, the Commission recognized this in its 1991 Statements of Consideration and acknowledged that the ongoing regulatory processes at the time did not fully address the safety issues of extended operation beyond the initial 40-year license term (56 FR 64965; December 13, 1991). Therefore, the Commission concluded that a formal review of the adverse effects of aging on a SSC's ability to perform its intended function would be needed at license renewal to ensure that operation during the period of the extended license would not be inimical to public health and safety. As such, the resulting licensing basis for a nuclear power plant during the renewal term consists of the current licensing basis (CLB), as well as any additional obligations to monitor, manage, and correct the adverse effects of aging. In other words, the intent of license renewal is to actively manage aging effects with aging management programs rather than just predicting future deterioration.

The bathtub curve analogy made by the petitioners would only apply to a scenario where component failures could occur if no aging management programs were used. The petitioners do not provide convincing evidence or

analysis to show that the bathtub curve phenomenon actually exists at nuclear power plants. Where the petitioners cited Beaver Valley and Vermont Yankee as two examples, neither example conclusively demonstrated how component failures were linked to the presence of a bath-tub trend, other than the fact that both plants happened to be in the later segments of their respective licenses. Nuclear power plant licensees are required to maintain aging management programs as part of their CLB following the license renewal review, to ensure that the effects of aging are adequately managed such that SSC's are able to perform their intended functions over time. The aging management programs, which are evaluated by the NRC, provide reasonable assurance that the effects of aging will be managed under the renewed license.

The petition statements in Issue 4 do not provide new information that would contradict positions taken by the Commission when it established the license renewal rule, nor do they demonstrate that sufficient reason exists to modify the current regulations.

Issue 5

The petitioners stated that the current rule exacerbates the difficulty the NRC staff and licensees have in following license renewal commitments. They argued that LRAs are often approved with the proviso that certain commitments be made and fulfilled, generally before the period of extended operation begins. These commitments often include inspections, tests, and analyses, as well as the development of programs vital to safety and environmental protection.

The petitioners stated that regulatory experience shows NRC staff turnover, as well as changes in oversight and licensee staff and ownership, will complicate and place increased emphasis on the proper handoff of unfulfilled licensee commitments.

NRC Response to Issue 5

The NRC agrees that it is important for licensees to fulfill commitments made in LRAs and for the NRC to verify that those commitments are met. Commitments are one part of the LRA review and approval process. A license renewal review can result in new license conditions and updates to final safety analysis reports (FSARs), as well as commitments. In those instances where the NRC staff makes a finding of reasonable assurance based on a commitment proposed by a licensee, the NRC staff elevates the commitment to a legal obligation, which is enforced in a license condition. Following the issuance of a renewed license, the NRC performs inspections, under License Renewal Inspection Procedure (IP) 71003, ''Post-Approval Site Inspection for License Renewal,'' as part of its oversight process. One objective of the IP 71003 inspection is to review the licensee's implementation of aging management programs, license conditions, and commitments associated with the license renewal review under 10 CFR part 54. Generally, these inspections are coordinated by the NRC regional staff and take place just before plants enter the period of extended operation. Findings are documented in Inspection Reports following each inspection. In addition to IP 71003 inspections, regulatory commitments that have not been made legal obligations are subject to triennial audits by the NRC staff. Where the petitioners claimed that the current rule for license renewal complicates the conduct of these inspections or other processes to verify license renewal commitments, they do not provide any evidence to demonstrate their claim.

Therefore, the petitioners' statements in Issue 5 do not provide a sufficient justification for the Commission to grant the petition for rulemaking.

Issue 6

The petitioners stated that the 20 years that pass from an application to the onset of the extended operation will, based on regulatory history, certainly see an inordinate amount of applicable regulatory change, resulting in grandfathered non-compliance issues. The petitioners stated that current issues under consideration for treatment in the license renewal process include aging management for underground, buried, or inaccessible pipes that carry radionuclides and aging management for safety-related, low-voltage cables that are below-grade and not qualified for a wet environment.

NRC Response to Issue 6

The Commission addressed compliance with future regulatory changes during the period of license renewal in promulgating the initial rule (56 FR 64963; December 13, 1991). The Commission previously responded to a similar comment, stating that comments to the rule ''incorrectly suggest that new information about plant systems and components as well as age-related degradation concerns discovered after the renewed license is issued would not be considered by the NRC or would not be factored into a plant's programs. The CLB of a plant will continue to evolve throughout the term of the renewed license to address the effects of age-related degradation as well as any other operational concern that arises. The licensee must continue to ensure that the plant is being operated safely and in conformance with its licensing basis. As regulations change over time, the current licensing basis is updated to the extent that the regulation is applicable to the plant. Thus, a regulatory change does not result in grandfathering non-compliance with applicable regulations. The NRC's regulatory oversight activities will also assess any new information on age-related degradation or plant operation issues and take whatever regulatory action is appropriate for ensuring the protection of the public health and safety.'' In addition, the petitioners do not further develop their case in explaining how the examples of underground, buried, or inaccessible piping and cables demonstrate their claim of non-compliance issues being grandfathered. In fact, the aging management for these SSCs are some examples of how ongoing operating experience informs the licensees' aging management programs over time in order to ensure compliance with 10 CFR 54.21(a)(3). Such programs are expected to evolve as necessary to address new operating experience. In addition, regulatory oversight activities such as IP 71003 inspections also provide the means for the NRC staff to verify and assess the ongoing effectiveness of licensees' aging management efforts.

The petitioners did not present new information in Issue 6 that would contradict positions taken by the Commission when it established the license renewal rule or demonstrate that sufficient reason exists to modify the current regulations.

Issue 7

The petitioners argued that the regulation conflicts with, circumvents, and frustrates the letter, spirit, object, and goals of NEPA. The petitioners stated that ''NEPA provides at Section 1500.2, that the Federal agencies, 'shall to the fullest extent possible: (e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.''' The petitioners stated that the ''Act provides at Section 1501(b) that 'NEPA procedures must insure [sic] that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and

public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.' ''

The petitioners also presented arguments under Issue 3 related to environmental considerations that will be addressed here. These arguments include the potential availability of energy sources that may be more available in the future (e.g., photovoltaic solar and wind power) but cannot be credibly projected over 20 years, the failure of the LRA to encompass effects of a changing environment, the effect of a rise in ocean temperatures on species affected by a thermal discharge plume or cooling intake, the availability of offsite storage for spent fuel and low-level radioactive waste, and the status of threatened or endangered species.

NRC Response to Issue 7

The NRC disagrees that the regulation conflicts with, circumvents, or frustrates the intent of NEPA. Rather, the twin aims of NEPA do not conflict with the licensing authority granted under the Atomic Energy Act of 1954, as amended (AEA). Section 103(c) of the AEA states that ''each [operating] license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.'' Consistent with the AEA, the NRC's license renewal regulation allows for a renewed license providing up to 40 years of operation (up to 20 years of the existing license plus 20 years of extended operation). As previously discussed in response to Issue 1, the Commission found that a 20-year application timeframe provided a reasonable and flexible period for licensees to perform informed business planning. The NRC fulfills its NEPA obligations and meets NEPA's twin aims by examining the reasonably foreseeable impacts and alternatives to issuing a renewed license for a period of up to 40 years. The petitioners did not provide any reasoning to dispute that the renewed license period of up to 40 years was consistent with the AEA, nor did the petition provide information to show that if the NRC, consistent with the AEA, issues a renewed license for up to 40 years, that the agency is, therefore, unable to meet NEPA's twin aims.

The petitioners also argued that the timing of LRAs affects the implementation of NEPA with regard to the consideration of alternatives. The NRC notes that the petitioners quoted the Council on Environmental Quality (CEQ) regulations in support of their arguments rather than NEPA, but neither the statute nor the CEQ regulations support their petition. The extent of the environmental review is not directly limited by the timing of the application submittal, nor does the NRC staff limit its analysis to the information provided in the environmental report. However, the NRC does apply the rule of reason in conducting its environmental analysis under NEPA, which may limit the extent of the environmental analysis to only those environmental impacts and alternatives that are reasonably foreseeable. This means that, while the environmental review considers various impacts and alternatives, the NRC is not required to analyze every possible future or speculative development, particularly those that cannot be reasonably assessed to inform its decision-making process. For example, the NRC analyzes alternative energy sources, but is not required under NEPA to consider speculative technological advances in alternative energy sources, which may or may not be available at the time of extended operation. The NRC must complete its NEPA review before it issues a renewed license in order to inform the agency's decision on license renewal, and the agency meets the twin aims of NEPA by analyzing those alternatives that are reasonably foreseeable at the time that the renewed license is issued. The petitioners did not provide information showing that the rule precludes the NRC from considering reasonable alternatives within the licensing action timeframe.

With respect to assessing the potential future environmental impacts associated with the issuance of a renewed license, the NRC complies with the statutory requirements of NEPA through its consideration of impacts in the generic and supplemental environmental impact statements (SEISs) for license renewal prepared in accordance with 10 CFR part 51, ''Environmental protection regulations for domestic licensing and related regulatory functions.'' As part of this environmental review process, the NRC evaluates the environmental impacts associated with operating a plant for an additional 20 years. This evaluation includes generic determination in its Generic Environmental Impact Statement for License Renewal (GEIS) of issues such as the future storage of spent fuel for the period of extended operation (*see* 10 CFR part 51, subpart A, Table B–1). The environmental review also addresses concerns such as those cited by the petitioners in Issue 3 related to the changing environment (e.g., rise in ocean temperatures on species affected by a thermal discharge plume or cooling intake), in addressing environmental impacts and alternatives that are reasonably foreseeable for each site. Furthermore, the petitioners did not provide new information to demonstrate that the changing environment would have a significant impact to affect the NRC's environmental analysis.

The petitioners also raised a concern in Issue 3 related to the potential change in status of threatened or endangered species over the renewed license period; such changes are accounted for in the NRC's ongoing consultations with other Federal agencies under the Endangered Species Act, which may result in imposing incidental take limits or monitoring for certain species, depending on the facility and its environment. To the extent that future developments or events may occur that require reinitiation of consultations, the NRC staff must consult with the relevant agency or agencies, regardless of whether the power plant has a renewed license.

Therefore, the change to license renewal regulations proposed by the petitioners would not affect the NRC's response to events related to the Endangered Species Act.

In Issue 7, the petitioners stated that the rule ''sets the [license renewal] application's environmental review at a maximum of 20 years in advance of the impacts from the Federal action.'' Other parts of the petition made similar statements to imply that the actual ''action'' taken by the NRC is not going to occur until up to 20 years into the future. For clarification, the ''proposed action'' before the NRC for license renewal is the ''issuance'' of a new and superseding license that allows operations for up to 40 years (any remaining time on the initial license plus up to 20 years of extended operation), which is discussed further in response to Issue 2. Therefore, NEPA requires the NRC to perform and complete an environmental review to support the agency's decision-making process with respect to issuance of the renewed license. As previously stated, a 40-year license is consistent with the AEA, and the NRC performs its NEPA analysis as part of the LRA review process. The petitioners did not provide new information that demonstrates that the NRC ought to perform its NEPA analysis at some time other than before it issues a renewed license.

Finally, in their arguments supporting Issue 7, the petitioners discussed the LRA submitted for Seabrook Unit 1. The

NRC considers these issues as intended by the petitioners and commenter to be examples of a specific case for which the petitioners believe the rule is deficient. Section III.C, ''Petition Statements and Comments Referencing the Seabrook Nuclear Generating Station, Unit 1 (Seabrook Unit 1), License Renewal Application,'' of this document contains a detailed response to the Seabrook example.

Therefore, the petitioners' arguments in Issue 7 do not demonstrate that sufficient reason exists to modify the current regulations.

III. Ongoing and Future License Renewal Actions

A. Suspending All Ongoing and Future License Renewal Application Reviews

The petitioners requested that, pending promulgation of a rule to revise 10 CFR 54.17(c), the NRC suspend all ongoing and future reviews of LRAs. The review of LRAs is not a rulemaking issue and thus will not be addressed in this response to a petition submitted under 10 CFR 2.802. The FR notice of receipt for the petition stated that the NRC will address the request to suspend ongoing and future LRA reviews in a separate action. Subsequently, the Commission denied the petitioners' request to suspend licensing actions; the Commission's denial can be found in ADAMS under Accession No. ML110250087.

B. Applying a 10-Year Timeframe to All Ongoing and Future License Renewal Application Reviews

Under the presumption that the NRC would revise 10 CFR 54.17(c) to 10 years, the petitioners requested that the NRC apply the 10-year requirement to the review of all ongoing and future LRAs. In this case, since the NRC is denying the petition, a 10-year requirement will not be applied to ongoing or future LRA reviews.

C. Petition Statements and Comments Referencing the Seabrook Nuclear Generating Station, Unit 1 (Seabrook Unit 1), License Renewal Application

The petitioners made multiple claims about license renewal that refer specifically to Seabrook Unit 1. One commenter raised similar claims. The NRC considers these issues as intended by the petitioners and commenter to be examples of a specific case for which the petitioners or commenter believe the rule is deficient. The petition and comment claims are similar to the claims the petitioners have submitted in a Seabrook adjudicatory proceeding, some of which the Atomic Safety and Licensing Board Panel admitted as contentions in that proceeding (including contentions related to alternatives the applicant considered in its environmental report).

To the extent that the petitioners' concerns relate specifically to Seabrook and the ongoing license renewal proceeding for that facility, the petitioners must pursue those issues through the adjudicatory process. Furthermore, to the extent that the petitioners or commenter raised issues about a specific licensing proceeding, the issues and comments are considered only as examples of specific cases where the petitioners believe the current rule is unduly burdensome, deficient, or needs to be strengthened, in support of the petition to amend 10 CFR 54.17(c). Any other comments regarding a specific licensing proceeding are beyond the scope of a petition for rulemaking under 10 CFR 2.802 and are not considered further in the NRC's responses.

IV. Public Comments on the Petition

The NRC received six letters containing comments on the proposed rulemaking from Mark Strauch, Marie Mackowoliez, NextEra Energy, the Nuclear Energy Institute (NEI), Beyond Nuclear, and Strategic Teaming and Resource Sharing. The comments are grouped into eight comment categories. Individual comments and their grouping can be found in the Public Comment Matrix in ADAMS under Accession Number ML113540177. The NRC also received a letter from New Hampshire State Representative Robin Reed asking to be added as a petitioner. The NRC accepted the request from State Representative Reed and considers her to be a petitioner for the purposes of this response.

Comment Category 1: The NRC wrote 10 CFR 54.17 before economic and regulatory changes took place that would affect license renewal.

Comment 1.1

The petitioners stated that the NRC last updated the rulemaking for 10 CFR 54.17 in 1995, before changes in NRC oversight and economic and regulatory shifts that enabled unprecedented changes in oversight and an industry-wide shift of focus from anticipated decommissioning to uprate and license renewal. The petitioners further stated that the rulemaking did not consider how such changes would affect aging analysis in LRA reviews or aging management planning. One commenter stated that the petition does not demonstrate that the rule is out of date and that the petitioners provided no supporting information for the statement. Two commenters stated that all applicants for license renewal must comply with 10 CFR part 50 and 10 CFR part 54, regardless of their corporate structure, and both commented that the petition did not include an analysis of how deregulation has affected aging management. One commenter added that the petitioners' attempts to provide new information that the NRC allegedly did not consider in its rulemaking fails to explain what that new information is and thus fails to demonstrate that sufficient reason exists to modify the current regulations. The commenter also stated that the petition fails to identify which changes in NRC oversight have affected aging management. Lastly, a commenter noted that 10 CFR part 54 considers the present context for a plant by requiring that each plant maintain its CLB.

NRC Response

The NRC recognizes that it last revised 10 CFR part 54 in 1995 but disagrees that the age of the rule negatively affects regulatory effectiveness or plant safety. The NRC agrees with the commenter that the petitioners provided no evidence or analysis to demonstrate that changes in regulatory structure or corporate structure of licensees have negatively affected aging analysis practices, aging management programs at plants, or the review of LRAs. This comment does not provide new information that would justify revising the rule.

Comment 1.2

A commenter stated that Seabrook Unit 1 is the only plant to file for license renewal 20 years in advance of the expiration of its operating license. The commenter also stated that, given the preponderance of license renewal review times for submittals and the agency approvals to date, no more than 10 years in advance is warranted for an application, which will significantly improve the quality and reliability of the agency's environmental impact statements (EISs) and the environmental reports upon which they rely, as required by NEPA. Finally, the commenter stated that the preponderance of the license renewal reviews and approvals conducted to date do not come close to requiring 10 to 20 years to complete and, therefore, the basis of the 20-year advance application date is invalid.

Two other commenters stated that Seabrook Unit 1 is not the first LRA filed 20 years in advance of the operating license expiration, and the plant is not an outlier in that respect.

Both commenters also noted that the NRC has granted several LRAs at or near the 20-year timeframe, and the NRC also has granted exemptions to the 20-year requirement for special circumstances. One commenter further stated that the need for sufficient lead time for corporate decision-making, which underlies 10 CFR 54.17(c), applies whether companies opt for license renewal of their nuclear facilities or development of alternative sources of generating capacity. Completion of the business planning process requires decisions about future generating capacity to be made many years in advance.

NRC Response

The comment that Seabrook Unit 1 is the only plant to submit an application 20 years before expiration of its license is incorrect. As discussed in response to Issue 1, at the time of the petition, nine reactor units were granted exemptions from 10 CFR 54.17(c), enabling the licensees to submit applications more than 20 years in advance of their license expiration.

The data does not support the commenter's corresponding conclusion that no more than 10 years is warranted in which to submit an LRA. Thus, the NRC agrees with the other comments that the Seabrook Unit 1 LRA is not an outlier with respect to the timeframe in which the application was submitted.

A commenter also concluded that, since the NRC does not need 20 years to review an LRA, the basis for the 20-year application timeframe is invalid. The NRC acknowledges that 20 years is not necessary to perform its review of an LRA, as noted by a commenter. The NRC typically reviews an application in about 2 years, when no hearings are requested and when the review is appropriately supported by the applicant. Applications for which hearings are requested would take longer than 2 years. Rather, the NRC established the 20-year timeframe to balance the need to collect sufficient operating history data to support an LRA with a utility's need to plan for the replacement of retired nuclear power plants in the case of an unsuccessful LRA. In promulgating the 1991 license renewal rule, the Commission considered the appropriate length of time for applicants to submit applications for license renewal (56 FR 64963; December 13, 1991). The Statements of Consideration discuss the NRC finding that the lead time for building new electric generation facilities (alternatives to the proposed action) is 10–14 years, depending on the technology. The NRC found that a 20-year application timeframe provided a reasonable and flexible period for licensees to perform informed business planning. Therefore, the comment does not present new information that contradicts positions taken by the Commission when it established the license renewal rule.

The NRC response to comments under Comment Category 7 discusses the issues raised in the above comments related to environmental reviews and EISs.

Comment 1.3

The petition noted that Seabrook Unit 1 provided no credible justification for its very early filing of an LRA. A commenter stated that, to the extent petitioners argued that the LRA is deficient, their claims are inappropriate in a rulemaking petition and should be raised in the ongoing adjudicatory proceeding, in which several of the petitioners are currently participating and have already raised similar claims.

NRC Response

As is discussed further in Section III.C of this document, the petition and commenter statements that raised issues about a specific licensing proceeding are beyond the scope of a petition for rulemaking under 10 CFR 2.802 and are not considered in the NRC's responses in this document. However, it should be noted that the rule language in 10 CFR part 54 contains no requirement for an applicant to justify the year in which it applies to renew a license.

The comments related to Comment Category 1 do not present new information that would contradict positions taken by the Commission when it established the license renewal rule or demonstrate that sufficient reason exists to modify the current regulations.

Comment Category 2: The rulemaking for 10 CFR 54.17 proceeded without sufficient consideration of the hearing rights of affected persons.

Comment 2.1

The petitioners stated that, by renewing the license of a nuclear power station 20 years in advance of the licensed extended period of operation, the NRC removes, to the distance of a full generation, the opportunity for an adjudicatory hearing. They contended that a coming generation of affected residents, visitors, and commercial interests would be unable or unprepared to speak for themselves.

A commenter noted that, according to the petitioners' logic, with even a 5-year renewal application period, some people might be unable or unprepared to speak for themselves. The commenter also raised the point that the 20-year renewal application period provides a greater ability for people to decide not to relocate to the area near the plant.

A commenter provided the following statements related to the hearings on LRAs. Parties in NRC contested licensing hearings have the opportunity to raise issues after the LRA is submitted and during the months immediately following the NRC staff's completion of its licensing review and the issuance of the safety and environmental licensing documents. Because the licensing hearing focuses on the LRA itself, and not future generations, hearing issues are most effectively addressed while the LRA is before the agency. Contrary to the petitioners' assertion, there is no statutory, regulatory, or other rationale for delaying the hearing until the renewed license goes into effect. The NRC will address any safety issues relating to plant operation that arise after license renewal using the array of processes available from the Commission's regulations.

Two commenters noted that there is no fundamental right to participate in administrative adjudications. *See Citizens Awareness Network, Inc.* v. *NRC,* 391 F.3d 338, 354 (1st. Cir. 2004). One commenter also stated that the NRC issues initial operating licenses for 40-year periods. The combination of a 20-year license renewal period with the 18 years (at most) that would remain on an initial license following the NRC's review of an LRA is less than the 40-year period for operating licenses that the NRC grants under 10 CFR part 50 or 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power plants.'' The petitioners' argument would mean that the NRC is incapable of providing a meaningful hearing opportunity on an initial operating license and that the AEA's provisions requiring both an opportunity for hearing and a 40-year term are fundamentally incompatible.

NRC Response

The NRC agrees that a longer renewal application period may increase the ability of people to choose not to relocate to the area near the plant but recognizes that this may not be true for some people. Regardless of the renewal application time period, it is impossible to identify all people who may relocate to the area during the entire term of the license renewal period. However, as discussed in Section II of this document in response to Issue 2 of the petition, current residents would sufficiently represent potential future area residents,

visitors, and commercial interests. Further, potential future residents, visitors, and commercial interests have other regulatory mechanisms to protect their interests, including a petition for enforcement action under 10 CFR 2.206. Those future residents, visitors, and commercial interests can also raise generic issues by requesting modification of the NRC's regulations under 10 CFR 2.802.

The comments related to hearings are generally correct. The NRC's regulations in 10 CFR part 2, ''Rules of practice for domestic licensing proceedings and issuance of orders,'' and 10 CFR part 54 provide the opportunity for a hearing and establish the requirements for intervention in a license renewal proceeding. Petitioners who meet the requirements of 10 CFR part 2 may intervene in a hearing, subject to the NRC's regulations.

The NRC agrees with the commenter who stated that the opportunity for a hearing focuses on the adequacy of the LRA itself, and those issues would be most effectively heard at the same time as the licensing decision, as provided by the NRC's regulations. The topic of hearing rights is discussed in response to Issue 2. As the commenter stated, the petitioners do not provide a rationale in support of their petition for why a hearing on the licensing issues would be more effective after license issuance but before the beginning of the extended operating period.

The commenter provided an example in which a plant may receive a 38-year renewed license. The commenter calculated 38 years by adding the 20-year renewal application period to the 20-year extended operation period and subtracting 2 years for NRC staff review of the renewal application. The commenter argued that the initial licensing period of 40 years and the approximately 38-year period for renewal both represent an NRC licensing decision for which the effects of operation would be realized over approximately a 40-year period. The period of the renewed license may be up to 40 years, as provided in 10 CFR 54.31, ''Issuance of a renewed license.'' The commenter is correct that the petitioners do not recognize the similarity of the licensing periods of the two licensing actions and that the petition for rulemaking does not explain why the initial 40-year licensing period is appropriate while the renewal licensing period of up to 40 years would be inappropriate. The NRC agrees with the commenter's point that, similar to the AEA authorization to grant an initial license for 40 years, a 40-year renewal licensing period does not deprive future residents of a fundamental hearing right. Specifically, the petition does not provide any support to show why the AEA authorization for an initial 40-year operating license does not deprive potential future residents of a hearing right, but a license renewal period of up to 40 years does deprive potential future residents of a hearing right.

The comments related to Comment Category 2 do not provide a sufficient justification for the Commission to grant the petition for rulemaking.

Comment Category 3: The rule currently enables applications to avoid addressing changing environmental considerations.

Comment 3.1

The petitioners stated that 10 CFR 54.17(c) promotes failure of the LRA to encompass the potential effects of an environment that is arguably changing at an unprecedented rate. In addition, the petition raised issues about acts of terrorism, spent fuel storage, and the potential for failures in complex systems. A commenter questioned the impact that a potential rise in ocean temperatures could have on aquatic species affected by a reactor's thermal discharge plume or the cooling intake structure. Assuming such changes occur, the U.S. Environmental Protection Agency or designated State agency that permits operations under Sections 316(a) and (b) of the Clean Water Act could modify those permits to account for the change in conditions. Regardless of whether these permitting authorities amend the National Pollutant Discharge Elimination System (NPDES) permits, Section 511(c)(2) of the Clean Water Act precludes the NRC from either second-guessing the conclusions in NPDES permits or imposing its own effluent limitations. The commenter further observed that the Commission repeatedly stated that security issues are not among the aging-related questions that are relevant in a license renewal review. Moreover, the NRC's environmental review need not address acts of terrorism. The storage and disposal of low-level waste and the onsite storage of spent fuel generated during the additional 20 years of operation are Category 1 issues previously considered in the GEIS for which the NRC has already codified environmental impact findings in 10 CFR part 51, subpart A, appendix B, ''Environmental effect of renewing the operating license of a nuclear power plant.'' In 10 CFR 51.23, ''Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact,'' the NRC generically addresses the eventual onsite or offsite storage of spent fuel following the permanent cessation of operations.

NRC Response

The commenter's statements generally align with the responses to Issues 3 and 7. As the commenter pointed out, a nuclear power plant's environment, including applicable regulations, may change over time for a variety of reasons. Not all of those potential changes are within the scope of a license renewal application review.

The comments related to Comment Category 3 do not provide a sufficient justification for the NRC to revise the rule.

Comment Category 4: The NRC and the licensees are unable to accurately predict aging-related failures.

Comment 4.1

The petition stated that 10 CFR 54.17(c) allows licensees and the NRC staff to press to untenable lengths of time the unproven ability to predict the aging and deterioration of SSCs. A commenter noted that the petitioners would have one believe that the NRC is powerless, once a renewal is docketed, to address any of the potential safety or aging-related issues enumerated in the petition.

A commenter stated that, to the extent these matters (the prediction of SSC aging) were not properly within the scope of license renewal, they were addressed as part of the licensees' ongoing operation (e.g., the corrective action and operating experience programs) and the NRC's continuing regulatory oversight process. The commenter further noted that the petitioners' argument is also belied by the stringency of the NRC's license renewal process.

A commenter noted that, in drafting 10 CFR part 54, the NRC did not expect licensees to predict all possible age-related failures before issuance of a renewed license. Instead, it requires licensees to have inspection and testing programs that would detect aging effects such that they could adequately manage those effects. A licensee's license renewal programs are detection and not prediction programs. The commenter concludes that this argument does not provide any grounds to reconsider the Commission's current regulations.

NRC Response

As part of the license renewal review, the NRC evaluates a licensee's aging management programs to ensure that each provides reasonable assurance that the licensee will adequately manage the

effects of aging. The petitioners provided no support for the claim that aging management technology is inadequate. The NRC agrees that the comments made by two commenters are a correct description of the process of aging management and continuing regulatory oversight. Those SSCs within the scope of license renewal and that require aging management review have specific aging management programs designed to manage the effects of aging. Any SSCs outside the scope of license renewal but subject to 10 CFR part 50 are subject to regulatory oversight. Licensees are required to maintain their aging management programs until the end of their license. As previously stated, the NRC evaluates the aging management programs to determine if they provide reasonable assurance that the licensee will manage the effects of aging.

Comment 4.2

The petitioners stated that filing for license renewal at midterm of the current license finds the licensee at a time in SSC service life when, in industry experience, few failures are observed and, generally, those that are observed are episodic or anomalous in nature and thus cannot be readily plotted as a trend for prediction purposes. The petition argued that the time of an elevated rate of failures caused by design, manufacturing, and construction defects has passed and is largely irrelevant to aging management in the proposed extended period of operation.

A commenter stated that the ''bathtub curve'' for component reliability trends does not apply to components that are subject to aging management programs. Rather, this curve applies when components have little or no maintenance or aging management activities applied. The commenter further stated that renewal applicants should be encouraged to perform the required aging management and environmental reviews as early as possible, since that would allow more time to evaluate and implement aging management programs for long-term operation. Rather than discourage early applications, it would make more sense to encourage such proactive efforts. Another commenter stated that license renewal applicants benefit not only from their own operating experience but from that of the entire industry.

Another commenter stated that petitioners argue that most aging effects increase rapidly in the fourth quarter and toward the end of the license and that licensees should be required to wait until these later-life structural failures have presented themselves before filing an LRA.

NRC Response

These comments relate to whether or not aging management programs can address the potential for failure rates at a nuclear power plant to exhibit a bathtub curve trend. The NRC agrees with the comment that a licensee benefits from industry-wide operating experience with respect to aging-related degradation. However, the NRC disagrees with the comment that it is appropriate to wait until the presentation of rapidly increasing aging effects at a plant before accepting an LRA. In the 1991 final rule, the Commission did ''not agree that it is adequate to wait to address aging concerns when they become apparent in plant operations.'' The Commission found that waiting to take corrective action after a failure occurs does not adequately control risk (56 FR 64974; December 13, 1991). Furthermore, the NRC stated that ''the licensee must continue to ensure that the plant is being operated safely and in conformance with its licensing basis.'' As such, the NRC expects that the licensees' aging management programs would continue to be informed over time by ongoing operating experience to address new issues. In its 1991 Statements of Consideration, the Commission also noted that the NRC's ''regulatory oversight activities will also assess any new information on age-related degradation or plant operation issues and take whatever regulatory action is appropriate for ensuring the protection of the public health and safety'' (56 FR 64963; December 13, 1991).

Comment 4.3

The petitioners stated that it is appropriate, from a regulatory audit standpoint, to wait until applicable failure rate and observed aging phenomena data are in hand before attempting time-limited aging analysis or aging management planning: Less than 10, not less than 20, years in advance of operating license expiration. A commenter stated that, to the extent the petition claimed that 20 years of plant operating experience is insufficient to provide a valid basis for renewal applications, the Commission has previously addressed and dismissed that argument in its 1991 final rule.

NRC Response

The NRC addressed this argument in the Statements of Consideration for the 1991 final rule. As the Commission stated, a minimum of 20 years provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation. A nuclear power plant will undergo a significant number of fuel cycles over 20 years, and plant and utility personnel will have a substantial number of hours of operational experience with every SSC (56 FR 64963; December 13, 1991). The petitioners have not provided any new insights or analyses that would cause the Commission to change the rule.

The comments related to Comment Category 4 do not provide a sufficient justification for the NRC to revise the rule.

Comment Category 5: The current rule exacerbates the NRC staff's and licensee's difficulty in following license renewal commitments.

Comment 5.1

The petition stated that regulatory experience shows that NRC staff turnover, as well as changes in oversight and licensee staff and ownership, will at once complicate and place increased emphasis on the proper handoff of unfulfilled licensee commitments. A commenter stated that the petition does not account for the fact that 10 CFR part 54 requires license renewal commitments to be reflected in the Updated Final Safety Analysis Report (UFSAR). Also, the commitments are publicly available on the facility's NRC docket. The commenter noted that the petition failed to acknowledge that the NRC's established regulatory oversight process for nuclear power plants (and other NRC licensees) has been functioning effectively for decades, despite NRC staff turnover and changes in oversight and licensee staff and facility ownership. The commenter continued that certain NRC regulations and guidance provide various processes for ensuring that the licensee satisfies such commitments. Such processes include, but are not limited to, program development, testing, formalized commitment processes, and NRC inspections, all of which require significant recordkeeping of commitment status. The commenter also stated that, during the term of the renewed license, the licensee continues to be subject to all NRC regulations in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, and 100, and their appendices, as applicable to holders of operating licenses under 10 CFR part 50 or combined license holders under 10 CFR part 52.

Another commenter cited the petitioners' question about the NRC's ability to keep track of license renewal commitments that are more than 10

years old, blaming NRC staff turnover, changes in oversight, and potential new facility ownership. The commenter observed that the license renewal commitments are in the docketed and searchable UFSAR. The commenter continued that the petitioners do not explain why the NRC staff would encounter any difficulty keeping track of documented commitments in a licensee's UFSAR.

NRC Response

The topic of license renewal commitments is discussed in the response to Issue 5. The NRC acknowledges that it is important for licensees to fulfill commitments and obligations made in LRAs. The NRC also agrees that existing regulatory processes are in place to verify license renewal commitments, and that the petition does not explain why the NRC staff would encounter complications in doing so.

The comments related to Comment Category 5 do not provide a sufficient justification for the NRC to revise the rule.

Comment Category 6: A 20-year timeframe will result in grandfathered non-compliance issues.

Comment 6.1

The petition stated that the 20 years that pass from application to onset of the extended period of operation will, based on regulatory history, certainly see an inordinate amount of applicable regulatory change, resulting in grandfathered non-compliance issues. A commenter stated that the Commission considered and dismissed this very concern (regarding non-compliance with future changes in regulations) in promulgating the original license renewal rules. The commenter further stated that, from the outset, the license renewal process has emphasized that, for renewal licensees (as well for reactor licensees that do not seek a renewed license), the NRC will consider new information and impose new requirements as appropriate, and more recent Commission pronouncements confirm that this position has not changed.

The commenter concluded that, as a matter of policy, the Commission was clearly correct in determining that licensees must address existing issues at an operating nuclear facility under the current license instead of postponing the matter until the license renewal period. Obviously, the resolution of any current safety concerns should not be deferred. By the same token, the resolution of current issues may have little or no relevance to safety during the period of extended operation, because those issues may be obviated by future changes in circumstances or regulatory requirements. As the Commission has held, it is not appropriate for the NRC or parties to spend valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues. Additionally, the NRC's license renewal process includes a ''safety valve'' allowing consideration of additional issues if appropriate (*see* 10 CFR 2.335, ''Consideration of Commission rules and regulations in adjudicatory proceedings'').

Finally, the commenter argued that the NRC's license renewal rules represent an informed, reasoned, and permissible exercise of the statutory authority under the AEA. The Commission established its renewal regulations after extensive deliberations, based on its determination that existing regulatory processes are adequate to ensure that the licensing bases of currently operating nuclear power plants provide and maintain an adequate level of safety. The license renewal rules further reflect the NRC's considered policy judgments that (1) issues relevant to both current operation and extended operation during the license renewal period should be addressed when they arise, not postponed until a license renewal decision (56 FR 64946; December 13, 1991); and (2) duplicating the Commission's ongoing regulatory reviews in a license renewal proceeding would waste NRC resources, which are better focused on aging management concerns.

Another commenter stated that the Commission has explained that it expects licensees and license renewal applicants to adjust their aging management programs to reflect lessons learned in the future through individual and industry-wide experiences. The Commission has described the license renewal program as a living program that continues to evolve. If new insights or changes emerge over time, the NRC staff will require, as appropriate, any modifications to SSCs that are necessary to ensure adequate protection of public health and safety or to bring the facility into compliance with a license or the rules and orders of the Commission. The commenter further stated that the NRC will act to ensure adequate protection, regardless of when an LRA is submitted. The Commission also considered this same argument nearly 20 years ago in its 1991 final rule.

NRC Response

The prior comments largely summarize the Commission's position previously stated in relation to the promulgation of the initial rule. The NRC generally agrees with the comment that it considered the issue in the prior rulemaking for this regulation. The NRC also agrees with the comment regarding expectations that licensee's aging management programs should be informed, and enhanced when necessary, based on the ongoing review of both plant-specific and industry operating experience.

The comments related to Comment Category 6 do not provide a justification for the NRC to revise the rule.

Comment Category 7: The 20-year timeframe allowed by 10 CFR 54.17(c) conflicts with NEPA.

Comment 7.1

The petitioners argued that an LRA for a nuclear power plant submitted 20 years in advance of the expiration of its current operating license cannot, to the fullest extent possible, accurately and reliably evaluate nor reasonably foresee the alternatives to the proposed action, as required by the CEQ regulations. They contended that the premature information constitutes nothing more than amassing needless detail that, in the case of a nuclear power plant relicensing action, establishes a bias towards a premature relicensing decision.

A commenter stated that, by allowing applications 20 years in advance of the licensing action, the NRC is rigging the purpose and need in violation of NEPA, citing circuit court comments. The commenter asserted that NEPA is to be interpreted to guard against and prevent such misinformed and misleading actions. The commenter also argued that the existence of a viable but unexamined alternative renders an EIS inadequate, and therefore agencies must study significant alternatives suggested by other agencies or the public. The commenter stated that there is simply no showing of any attempt by the NRC to avoid the consideration of the environmental impacts associated with license renewal projects or to deprive the public of information related to those impacts by dividing a larger project into smaller units.

NRC Response

The NRC disagrees with one commenter's statement that the 20-year timeframe constitutes a rigging of the purpose or need with regard to NEPA. Rather, the 20-year time frame, which is part of the 40-year renewed license term, is consistent with the AEA. Section 103(c) of the AEA states that ''each [operating] license shall be issued for a specified period, as determined by

the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period.'' Since the license renewal period consists of the period of extended operation (20 years) and any time remaining on the original license (up to 20 years per 10 CFR 54.17(c)), the license renewal period is consistent with the 40-year license period allowed under the AEA. Furthermore, the Commission considered the timing of an LRA in the promulgation of the license renewal rule. As is discussed in more detail in response to Issue 1, the Commission found that a 20-year application timeframe provided a reasonable and flexible period for licensees to perform informed business planning. The commenter provided no information demonstrating that the NRC established the 20-year application timeframe to rig the purpose or need of NEPA.

As discussed in Issue 7, the commenter argued that the timing of LRAs affects the implementation of NEPA with regard to the consideration of alternatives. The extent of the environmental review is not directly limited by the timing of the application submittal, nor does the NRC staff limit its analysis to the information provided in the environmental report. The NRC applies the rule of reason in conducting its environmental review under NEPA, which may limit the extent of an environmental review to only those environmental impacts that are reasonably foreseeable. This means that, while the environmental review considers various impacts and alternatives, the NRC is not required to analyze every possible future speculative development. The NRC must complete its NEPA review before the issuance of a renewed license to inform the agency's decision on license renewal. The commenter did not provide information showing that the rule precludes the NRC from considering reasonable alternatives within the licensing action timeframe.

Comment 7.2

A commenter stated that setting the maximum advance date for the submission of a relicensing application at 20 years in effect needlessly restricts the substance of the environmental review by fixing its analysis unreasonably and prematurely from an application's expiration date and the beginning of impact from the proposed Federal action. By setting the application's environmental review at a maximum of 20 years in advance of the impacts from the Federal action, the regulation, as currently written, effectively limits the scope and content of an environmental review, rendering it a speculative venture and a snapshot on the recent past rather than a rigorous and objective assessment of what is reasonably foreseeable.

A commenter stated that it is well established that the scope of the environmental review required in connection with license renewal is appropriately limited and that the limited scope of review has been consistently upheld. The NRC's regulations do require a discussion of alternatives by both the applicant (in the environmental report) and the NRC staff (in the SEIS) in connection with renewal applications. The commenter argued that issuance of a renewed license and initiation of the period of extended operation under the renewed license are part of the same Federal action; there is no additional connected action. Therefore, the potential environmental impacts of the proposed license renewal are considered together, not piecemeal. Another commenter stated that, with regard to Vermont Yankee, the Supreme Court made clear that the concept of alternatives under NEPA must be bounded by some notion of feasibility. As a result, agencies are not required to consider alternatives that are remote and speculative. Instead, agencies may deal with circumstances as they exist and are likely to exist. While there will always be more data that could be gathered, agencies must have some discretion to draw the line and move forward with decision-making. The Commission's decision to allow licensees to file LRAs in accordance with 10 CFR 54.17(c) and perform its environmental review within that timeframe is a valid exercise of this discretion.

NRC Response

As discussed in response to Issue 7, the extent of the environmental review is not directly limited by the timing of the application submittal, nor does the NRC staff limit its analysis to the information provided in the environmental report. However, the NRC does apply the rule of reason in conducting its environmental review under NEPA, which may limit the extent of an environmental review to only those environmental impacts that are reasonably foreseeable. This means that, while the environmental review considers various impacts and alternatives, the NRC is not required to analyze every possible future or speculative development, particularly those that cannot be reasonably assessed to inform its decision-making process. The NRC must complete the NEPA review before it issues a renewed license to inform the agency's decision on license renewal. The commenter did not provide information showing that the rule precludes the NRC from considering reasonable alternatives within the licensing action timeframe.

Comment 7.3

The petition stated that an application for relicensing submitted 20 years in advance of the current license expiration date cannot reasonably be determined to be sufficiently complete nor reasonably be represented to rigorously explore and objectively evaluate all reasonable alternatives.

A commenter argued that it is not reasonable to consider that an environmental report based on data that is 20 years old or older can solely constitute the foundation for an adequately studied EIS prepared by the NRC.

This in fact constitutes a violation of NEPA principles, as the harm that NEPA seeks to prevent is complete when the agency makes a decision without sufficiently considering information that NEPA requires be placed before the decision-maker and the public. An application that is filed 20 years in advance of a 2030 expiration date relies on conclusions made 34 years before the requested action and stretches the veracity and validity of the environmental report to an amassing of outdated and meaningless details for the agency's preparation of an EIS. For example, in the Seabrook Unit 1 relicense application, filed in 2010, the preponderance of expert documentation about renewable alternatives is gathered from 2008, effectively freezing the environmental evaluation for the region of interest 22 years from the requested Federal action. It is disingenuous to characterize that data 22 to 34 years out from the requested action as sufficiently complete, as NEPA is established to require. NextEra relies upon the 20-year advance provision in 10 CFR 54.17(c) to truncate its alternative evaluation and justify the omission of more recent documents from experts and expert agencies from 2009 and 2010.

One commenter stated that, as a matter of administrative law, agencies have broad discretion to formulate their own procedures, and the NRC's authority in this respect has been termed particularly great. Similarly, although an agency may alter its rules in light of its accumulated experience in administering them, an agency must offer a reasoned explanation for the change. The petitioners' request for relief provides no such reasonable basis

for overturning the NRC's current license renewal framework. Moreover, in the context of environmental regulations, the Supreme Court has made clear that NEPA does not require agencies to adopt any particular internal decision-making structure and that the only procedural requirements imposed by NEPA are those stated in the plain language of the Act. Therefore, the Court found that NEPA cannot serve as the basis for a substantial revision of the carefully constructed procedural specifications of the Administrative Procedure Act.

Another commenter stated that NEPA does not require agencies to adopt any particular internal decision-making structure. In fact, the Commission has broad discretion to structure its NEPA inquiries. As the Supreme Court made clear in Vermont Yankee over 30 years ago, NEPA does not provide any basis for adding procedural requirements beyond the carefully constructed procedural specifications imposed by the Administrative Procedure Act. In Vermont Yankee, the Court also explained that the only procedural requirements imposed by NEPA are those stated in the plain language of the Act. The Commission has decided that its safety review of LRAs under the AEA can be initiated with 20 years remaining on the current license, and NEPA cannot compel a different procedural timetable. Accordingly, the petitioners' claim that NEPA requires the NRC to amend 10 CFR 54.17(c) to allow for a later analysis of alternatives finds no support in law.

NRC Response

The NRC disagrees that the environmental reports submitted in support of LRAs must rely on data that are 20 years old or older, and the NRC disagrees that environmental report data forms the sole foundation for EISs. As discussed in response to Issue 2, the ''proposed action'' before the NRC for license renewal is the ''issuance'' of a new and superseding license that allows operations for up to 40 years (any remaining time on the initial license plus up to 20 years of extended operation), which is also discussed in response to Issue 2. Therefore, NEPA requires the NRC to perform and complete an environmental review to support the agency's decision-making process with respect to issuance of the renewed license. Furthermore, as described in response to Issue 7, the license renewal regulation is consistent with the 40-year license term allowed under the AEA. The environmental report is submitted to support an LRA, and the NRC reviews that environmental report along with the application. The environmental report, therefore, does not need to rely on data that is 20 years old.

The comment that an environmental report forms the sole basis for a license renewal EIS, or that alternatives proffered by the applicant in its environmental report are the only alternatives the NRC staff considers, is also incorrect. The NRC staff undertakes an independent consideration of environmental impacts and documents its consideration in the EIS.

These comments do not provide sufficient justification for the NRC to revise the rule.

Comment 7.4

A commenter provided, as an example, that on June 1, 2010, NextEra submitted its application for relicensing the Seabrook nuclear power plants on the New Hampshire seacoast 20 years in advance of its current 40-year operating license expiration date, identified as March 15, 2030. Given that the proposed relicensing period for which the proposed Federal action is being taken is for the period 2030–2050, Chapter 7 of the Seabrook License Renewal Environmental Report provides a dated, incomplete, and meaningless assessment of energy alternatives and is biased towards the requested relicensing action.

Another commenter stated that, although the petitioners would have one believe that a 20-year renewal window somehow circumvents or frustrates NEPA, it does no such thing. The commenter stated that this assertion is predicated on the misguided belief that somehow there will be dramatic changes in how solar, wind, or other renewables penetrate the grid. The commenter watched the California Altamont wind farm in dismay every day. Consumers and energy regulators need certainty in the near-, mid-, and long-term horizon. Early nuclear power plant license renewal injects more certainty, not less, in that process. The commenter concluded that the petitioners convey no demonstrable safety, security, or environmental concerns about Seabrook.

NRC Response

Section III.C of this document contains the NRC's responses to issues related to the Seabrook LRA. One commenter raised several concerns about alternatives in the environmental report or the NRC staff's EIS. As stated in response to Issue 7, the extent of the environmental review is not directly limited by the timing of the application submittal, nor does the NRC staff limit its analysis to the information provided in the environmental report. The NRC staff undertakes an independent consideration of environmental impacts and documents that consideration in its EIS. Furthermore, there is no guarantee that a shorter application timeframe would increase the number of alternatives analyzed in an environmental report. Some alternatives may need more than 10 years of lead time for design and construction. Therefore, allowing applicants to apply for license renewal more than 10 years in advance of a license's expiration date does not unreasonably foreclose alternatives, as suggested by the petitioners and one commenter.

The comments related to Comment Category 7 do not provide a justification for the NRC to revise the rule.

Comment Category 8: General comments.

Comment 8.1

A commenter argued that, to amend the regulations to a 10-year advance time period would lead the way to a safer means of producing energy. Two commenters argued that the petitioners have presented no new information that contradicts the agency positions reflected in the existing license renewal rule or provides sufficient cause to modify those positions.

One of the commenters further stated that the petition fails to provide adequate legal, factual, or policy-based support for the assertions it makes or the relief it seeks. By raising issues the Commission has already considered in promulgating its license renewal rules, the petition ignores the carefully crafted regulatory framework, including 10 CFR 54.17(c), that supports license renewal. Other aspects of the petition address topics that are managed by the Commission's ongoing regulatory oversight processes and regulations, which should not be addressed through changes to the license renewal rules.

NRC Response

These particular comments express general support or opposition to the petition requests. The comments do not provide additional analysis or data that would justify revising the rule.

Comment 8.2

A commenter concluded that the NRC and the industry would significantly benefit by avoiding subsequent adjudicatory challenges if licensees were required to wait to apply for license renewal no more than 10 years in advance of the license expiration, when trends, studies, agreements, and

commercial ventures were more distinctly and discretely developed.

NRC Response

The Commission established the 20-year timeframe to balance the need to collect sufficient operating history data to support an LRA with the needs of a utility to plan for the replacement of retired nuclear plants in the case of an unsuccessful LRA.

The rule, allowing a license period of 40 years, is in accordance with the AEA, which provides for a license period of up to 40 years (*see* Section 103(c) of the AEA). The rule is not intended to limit the number of adjudicatory challenges. Rather, the NRC regulations are designed to provide appropriate opportunities for hearings to affected parties. Reducing the number of potential adjudicatory challenges is not sufficient justification to revise the regulation.

The comments related to Comment Category 8 do not provide a sufficient justification for the Commission to revise the rule.

V. Determination of Petition

The NRC has reviewed the petition and the public comments and appreciates the concerns raised. For the reasons described in Sections II and III of this document, the NRC is denying the petition under 10 CFR 2.803. The petitioners did not present any new information that would contradict positions taken by the Commission when it established the license renewal rule, nor did the petitioners provide new, significant information to demonstrate that sufficient reason exists to modify the current regulations.

The Commission previously established the earliest date for submission of LRAs after soliciting and considering extensive comments during the 1991 rulemaking for 10 CFR 54.17(c). In its 1991 Statements of Consideration, the Commission determined that a 20-year timeframe was reasonable for licensees to collect sufficient operating history and also sufficient for a utility to plan for replacement of retired nuclear plants in the case of an unsuccessful LRA. The petition did not provide new information to challenge this basis.

Finally, the renewed license period of 40 years is consistent with the AEA, and 10 CFR 54.17(c) does not cause environmental reviews submitted to support LRAs to be in conflict with NEPA. The license renewal environmental review and SEIS consider reasonably foreseeable environmental impacts and alternatives in accordance with the provisions of 10 CFR part 51. The rule change requested by the petitioners would not affect the process the NRC uses to implement NEPA. The petitioners do not provide new information or analysis to demonstrate that the regulations in 10 CFR part 51 are insufficient for the NRC to comply with the requirements of NEPA.

For these reasons, the NRC denies the petitioners' requests for the NRC to modify its requirements related to the LRA period, to suspend license renewal reviews, and to apply a 10-year application timeframe to ongoing and future LRAs.

VI. Availability of Documents

The following table provides information on how to access the documents referenced in this document. For more information on accessing ADAMS, see the **ADDRESSES** section of this document.

Date	Document	ADAMS accession No./**Federal Register** Citation
December 13, 1991	Nuclear Power Plant License Renewal	56 FR 64943
September 27, 2010	Earth Day Commitment/Friends of the Coast, Beyond Nuclear, Seacoast Anti-Pollution League, C–10 Research and Education Foundation, Pilgrim Watch, and New England Coalition; Notice of Receipt of Petition for Rulemaking.	75 FR 59158
January 24, 2011	Commission Memorandum and Order (CLI–11–01), In the Matter of Petition for Rulemaking to Amend 10 CFR § 54.17(c).	ML110250087
January 31, 2012	Public Comment Matrix for Petition for Rulemaking 54–6, License Renewal	ML113540177

Dated at Rockville, Maryland, this 4th day of May 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2012–11418 Filed 5–11–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0216; Directorate Identifier 2010–SW–025–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, which requires inspecting the tail rotor (T/R) pylon for a loose or missing fastener, a crack, damage, or corrosion and adding an internal doubler to the aft shear deck tunnel assembly. This proposed AD is prompted by the discovery of cracks in T/R pylons. The proposed actions are intended to detect a loose or missing fastener, a crack, damage, or corrosion on the T/R pylon and, if present, to repair the T/R Pylon and install a doubler on the aft shear deck tunnel assembly or to replace the T/R pylon and install the doubler on the aft shear deck tunnel assembly to prevent failure of the T/R pylon or other T/R components, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by July 13, 2012.

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

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

Examining the AD Docket: You may examine the AD docket on the Internet

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

For service information identified in this proposed AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, TX 76137.

FOR FURTHER INFORMATION CONTACT: Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7763; email *nicholas.faust@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

We propose to adopt a new AD for Sikorsky Model S–92A helicopters with a T/R pylon, part number (P/N) 92000–06102–041. This proposal is prompted by the discovery of cracks in the forward lower spar region of T/R pylons installed on Sikorsky

Model S–92A helicopters. The T/R pylon supports the T/R and the horizontal stabilizer, and a crack in a T/R pylon could alter vibration characteristics of the T/R pylon, which could adversely affect fatigue lives of T/R components. This condition, if not corrected, could result in failure of the T/R pylon or other T/R components and subsequent loss of control of the helicopter.

FAA's Determination

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

Related Service Information

We have reviewed Sikorsky Alert Service Bulletin (ASB) No. 92–53–001, dated June 23, 2008 (ASB No. 92–53–001), and ASB No. 92–53–004B, Revision B, dated June 21, 2011 (ASB No. 92–53–004B). ASB No. 92–53–001 specifies for a T/R pylon with more than 500 flight-hours a one-time inspection of the T/R pylon ''components and structure for obvious damage, cracks, corrosion, and security.'' ASB No. 92–53–004B specifies a one-time replacement of the T/R pylon, P/N 92000–06102–041, with T/R pylon, P/N 92070–20058–042, and installation of a doubler on the aft shear deck tunnel assembly. The ASB specifies a replacement schedule based on the T/R pylon's hours for specified serial numbered helicopters.

Proposed AD Requirements

This proposed AD would require compliance with specified portions of the manufacturer's alert service bulletins. This proposal would require, for helicopters with 500 or more hours time-in-service (TIS), within 25 hours TIS and thereafter at intervals not to exceed 10 hours TIS, inspecting the T/R pylon for a crack, damage, corrosion, or loose or missing fasteners. If a crack or an area of damage or corrosion is found or if there is a loose or missing fastener, before further flight, this proposed AD would require repairing the crack, damage, or corrosion, and replacing any loose or missing fastener and installing a doubler, P/N 92070–20087–101, on the aft shear deck tunnel assembly; or replacing the T/R pylon, P/N 92000–06102–041, with an airworthy T/R pylon, P/N 92070–20058–042, and installing a doubler, P/N 92070–20087–101, on the aft shear deck tunnel assembly. If there is no crack in the T/R pylon, this proposed AD would require replacing the T/R pylon, P/N 92000–06102–041, with an airworthy T/R pylon, P/N 92070–20058–042, and adding a doubler, P/N 92070–20087–101, on the aft shear deck tunnel assembly, according to the following compliance schedule:

- For a T/R pylon with 3,750 or more hours TIS, within 12 months;
- For a T/R pylon with 1,500 through 3,749 hours TIS, within 24 months; and
- For a T/R pylon with 1,499 or less hours TIS, within 36 months.

Replacing the T/R pylon, P/N 92000–06102–041, with an airworthy T/R pylon, P/N 92070–20058–042, and installing doubler, P/N 92070–20087–101, on the aft shear deck tunnel assembly, would constitute terminating action for the requirements of this AD.

Costs of Compliance

We estimate that this proposed AD would affect 20 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It would take approximately 1 work-hour per helicopter to inspect and 120 work-hours per helicopter to replace the T/R pylon and install the doubler. The average labor rate is $85 per work-hour and required parts would cost approximately $339,080 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD per helicopter to be $356,505, and the total cost on U.S. operators to be $7,130,100, assuming 85 inspections per year are performed on each helicopter and assuming replacement of the T/R pylon and installing the doubler on each helicopter.

According to the Sikorsky service information, 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. Accordingly, 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, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. FAA–2012–0216; Directorate Identifier 2010–SW–025–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, with a tail rotor (T/R) pylon, part number (P/N) 92000–06102–041, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a loose or missing fastener, a crack, damage, or corrosion on the T/R pylon that could result in failure of the T/R pylon or other T/R components, and subsequent loss of control of the helicopter.

(c) Compliance

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

(d) Required Actions

(1) For helicopters with 500 or more hours time-in-service (TIS), within 25 hours TIS and thereafter at intervals not to exceed 10 hours TIS, inspect each T/R pylon for a crack, damage, corrosion, or a loose or missing fastener in accordance with the Accomplishment Instructions, paragraph 3.A.(4)(a) through paragraph 3.A.(4)(f), and referring to Figure 1 of Sikorsky Alert Service Bulletin (ASB) No. 92–53–001, dated June 23, 2008, except you are not required to contact Sikorsky Customer Service Engineering per paragraph 3.A.(4)(c)*1* of ASB 92–53–001, dated June 23, 2008.

(2) If there is a crack, damage, corrosion, or a loose or missing fastener, before further flight, either:

(i) If within allowable tolerances, repair each crack and each area of damage or corrosion and replace any loose or missing fastener; or

(ii) Replace the T/R pylon, (P/N) 92000–06102–041, with T/R pylon, P/N 92070–20058–042, as follows:

(A) Conduct the Total Indicated Run-out procedure on the No. 4 and No. 5 T/R drive shafts and remove the T/R pylon; and

(B) Install the doubler, P/N 92070–20087–101, as follows:

(*1*) For helicopters, serial numbers (S/Ns) 920006 through 920082, on the aft shear deck tunnel assembly, P/N 92204–05103–041 or –045, in accordance with the Accomplishment Instructions, paragraph 3.B.(1) through 3.B.(30) and while referring to Figures 1, 2, and 4 of Sikorsky ASB No. 92–53–004B, Revision B, dated June 21, 2011 (92–53–004B).

(*2*) For helicopters, S/Ns 920083 through 920124, on the aft shear deck tunnel assembly, P/N 92204–05103–043, in accordance with the Accomplishment Instructions, paragraph 3.C.(1) through 3.C.(21) and referring to Figures 3 and 4 of ASB 92–53–004B.

(3) If there is no crack in the T/R pylon, replace T/R pylon, P/N 92000–06102–041, with T/R pylon, P/N 92070–20058–042, and install doubler, P/N 92070–20087–101, on the aft shear deck tunnel assembly as specified in paragraphs (2)(ii)(A) through (2)(ii)(B) of this AD, according to the following:

(i) For a T/R pylon with 3,750 or more hours TIS, replace and install doubler within 12 months.

(ii) For a T/R pylon with 1,500 through 3,749 hours TIS, replace and install doubler within 24 months.

(iii) For a T/R pylon with 1,499 or less hours TIS, replace and install doubler within 36 months.

(4) Replacing T/R pylon, P/N 92000–06102–041, with T/R pylon, P/N 92070–20058–042, and installing internal tail cone doubler, P/N 92070–20087–101, on the aft shear deck tunnel assembly, constitutes terminating action for the requirements of this AD.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Nicholas Faust, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7763; email *nicholas.faust@faa.gov.*

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

(f) Additional Information

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT 06614; telephone (800) 562–4409; email *tsslibrary@sikorsky.com;* or at *http://www.sikorsky.com.* You may review this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, TX 76137.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 5340, Fuselage Main, Attach Fittings.

Issued in Fort Worth, Texas, on May 2, 2012.

Carlton N. Cochran,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–11475 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–037]

Standards for Business Practices for Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for additional comment.

SUMMARY: On February 22, 2012, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking (77 FR 10415) (NOPR) proposing to amend its regulations to incorporate by reference the latest version (Version 2.0) of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines. The Commission, however, did not propose to adopt two standards it found inconsistent with its regulations. Among the comments filed with the Commission were comments from NAESB explaining that its Wholesale Gas Quadrant Executive Committee was in the process of voting on two standards to rectify the inconsistency noted in the NOPR by the Commission. On May 4, 2012, NAESB filed a status report informing the Commission that it had finalized the two corrections.

The Commission is providing interested parties an opportunity to file comments with respect to the two corrected standards adopted by NAESB and whether the Commission should incorporate these revised standards into its regulations.

DATES: Comments are due June 4, 2012.

ADDRESSES: You may submit reply comments, identified by Docket No. RM96–1–037, by any of the following methods:

- *Agency Web Site: 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:* Commenters unable to file comments electronically must mail or hand deliver an original of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Adam Bednarczyk (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6444, Email: *adam.bednarczyk@ferc.gov.*

Tony Dobbins (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6630, Email: *tony.dobbins@ferc.gov.*

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8321, Email: *gary.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Additional Comments

May 8, 2012

On February 16, 2012, the Commission issued a Notice of Proposed Rulemaking (NOPR) [1] proposing to amend its regulations at 18 CFR 284.12 to incorporate by reference the latest version (Version 2.0) of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines. The Commission, however, did not propose to adopt two standards it found inconsistent with its regulations.

Among the comments filed with the Commission in this proceeding were comments from NAESB explaining that NAESB's Wholesale Gas Quadrant Executive Committee was in the process of voting on minor corrections to NAESB WGQ Standard Nos. 0.3.19 and 0.3.21 to rectify the inconsistency noted in the NOPR by the Commission. On May 4, 2012, NAESB filed a status report informing the Commission that it had finalized the two corrections.

The Commission is providing interested parties an opportunity to file comments with respect to the two corrected standards adopted by NAESB and whether the Commission should incorporate the version of the standards that reflects these corrections into its regulations.

By this notice, additional comments should be filed on or before June 4, 2012.

Dated: May 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11569 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Standards for Business Practices for Interstate Natural Gas Pipelines,* notice of proposed rulemaking, 77 FR 10415 (Feb. 22, 2012), FERC Stats. & Regs. ¶ 32,686 (Feb. 16, 2012).

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 41

[PTO–C–2011–0007]

RIN 0651–AC55

CPI Adjustment of Patent Fees for Fiscal Year 2013

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to adjust certain patent fee amounts for fiscal year 2013 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business as reflected by the CPI.

DATES: Written comments must be received on or before June 13, 2012. No public hearing will be held.

ADDRESSES: You may submit comments, identified by RIN number RIN 0651–AC55, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Gilda.Lee@uspto.gov.* Include RIN number RIN 0651–AC55 in the subject line of the message.
- *Fax:* (571) 273–8698, marked to the attention of Gilda Lee.
- *Mail:* Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Gilda Lee.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this proposed rulemaking.

The comments will be available for public inspection at the Office of the Chief Financial Officer, currently located in Madison West, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT:

Gilda Lee by email at *Gilda.Lee@uspto.gov*, by telephone at (571) 272–8698, or by fax at (571) 273–8698.

SUPPLEMENTARY INFORMATION: Section 41(f) of Title 35 of the United States Code provides the USPTO with the authority to adjust certain statutory patent fees to reflect fluctuations during the preceding twelve months in the Consumer Price Index (CPI). The purpose of this provision is to allow the USPTO to recover higher costs of providing services as reflected by the CPI. The USPTO proposes to adjust certain patent fees in accordance with 35 U.S.C. 41(f), as amended by the Consolidated Appropriations Act (Pub. L. 108–447, 118 Stat. 2809 (2004)) and the Leahy-Smith America Invents Act (Pub. L. 112–29). The fee increase helps the USPTO to meet its strategic goals and maintain effective and efficient operation of the patent system. This notice sets forth which fees will be adjusted and how the adjustment will be calculated based on the current fluctuation in the CPI over the twelve months preceding this notice. The actual adjustment will be calculated based on the fluctuation in the CPI over the twelve months preceding the date on which the final rule is published.

Background

Statutory Provisions: As background concerning the patent fee structure, patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, § 532(a)(2), 108 Stat. 4809, 4985 (1994)), and section 4506 of the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106–113, 113 Stat. 1501, 1501A–565 (1999)). For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

The fiscal year 2005 Consolidated Appropriations Act (section 801 of Division B) provided that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108–447, 118 Stat. 2809, 2924–30 (2004). The Omnibus Appropriations Act, 2009, extended the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through September 30, 2011. *See* Public Law 112–4, 125 Stat. 6 (2011); Public Law 111–322, 124 Stat. 3518 (2010); Public Law 111–317, 124 Stat. 3454 (2010); Public Law 111–290, 124 Stat. 3063 (2010); Public Law 111–242, 124 Stat. 2607 (2010); Public Law 111–224, 124 Stat. 2385 (2010); Public Law 111–117, 123 Stat. 3034 (2009); Public Law 111–8, 123 Stat. 524 (2009); Public Law 111–6, 123 Stat. 522 (2009); Public Law 111–5, 123 Stat. 115 (2009); Public Law 110–329, 122 Stat. 3574 (2008); Public Law 110–161, 121 Stat. 1844 (2007); Public Law 110–149, 121 Stat. 1819 (2007); Public Law 110–137, 121 Stat. 1454 (2007); Public Law 110–116, 121 Stat. 1295 (2007); Public Law 110–92, 121 Stat. 989 (2007); Public Law 110–5, 121 Stat. 8 (2007); Public Law 109–383, 120 Stat. 2678 (2006); Public Law 109–369, 120 Stat. 2642 (2006); and Public Law 109–289, 120 Stat. 1257 (2006). The Leahy-Smith America Invents Act, enacted September 16, 2011, codified the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act.

Section 11 of the Leahy-Smith America Invents Act provides for a surcharge of fifteen percent, rounded by standard arithmetic rules, on all fees charged or authorized by 35 U.S.C. 41(a), (b), and (d)(1), as well as by 35 U.S.C. 132(b). Section 11 of the Act provides that this fifteen percent surcharge is effective ten days after the date of enactment (i.e., September 26, 2011). Section 11 also provides that this fifteen percent surcharge shall terminate, with respect to a fee to which the surcharge applies, on the effective date of the setting or adjustment of that fee pursuant to the exercise of the authority under section 10 of the Act for the first time with respect to that fee. Section 10 fee-setting will be implemented in a future separate rulemaking.

As for this rulemaking, Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index over the previous twelve months. If the annual change in CPI is one percent or less, no fee adjustment for CPI fluctuations will be pursued.

The USPTO proposes that this CPI increase be implemented on October 1, 2012. This interim increase in fees is necessary to allow the USPTO to meet its strategic goals within the time frame outlined in the FY 2013 President's Budget. The interim fee increase is a bridge to provide resources until the USPTO exercises its fee-setting authority and develops a new fee structure that will provide sufficient financial resources in the long term. An adequately funded USPTO will optimize the administration of the U.S. intellectual property system, and thereby move innovation to the marketplace more quickly, creating and sustaining U.S. jobs and enhancing the health and living standards of Americans.

Fee Adjustment Level: The USPTO proposes that the patent statutory fees established by 35 U.S.C. 41(a) and (b) be adjusted to reflect the most recent fluctuations occurring during the twelve-month period prior to publication of the final rule implementing this CPI adjustment, as measured by the Consumer Price Index for All Urban Consumers (CPI–U). The Office of Management and Budget (OMB) has advised that in calculating these fluctuations, the USPTO should use CPI–U data as determined by the Secretary of Labor, which is found at *http://www.bls.gov/cpi/*.

In accordance with the above description of the statutory fee adjustment, the USPTO proposes to adjust patent statutory fee amounts based on the most recent annual increase in the CPI–U, as reported by the Secretary of Labor, at the time the final rule implementing this CPI adjustment is published. Proposed adjusted fee amounts are not included in this proposed rule in order to avoid confusion that could arise from using projected increases in the proposed rule that may not end up matching actual increases at the time of the final rule. Annual increases to the CPI–U are published monthly, and before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI–U. Adjusted patent statutory fee amounts based on the most recent annual increase in the CPI–U, as reported by the Secretary of Labor, will be published in a final rules notice.

The fee amounts will be rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of $100 or more will be rounded to the nearest $10. Fees of less than $100 will be rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures: Any fee amount adjusted by the final rule that is paid on or after the effective date of the fee adjustment enacted by the final rule would be subject to the new fees then in effect. The amount of the fee to be paid for a given item will be determined by the time of filing of that item with the Office. The time of filing will be determined either according to the date of receipt in the Office (37 CFR 1.6) or

the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of 37 CFR 1.8. Items for which a Certificate of Mailing or Transmission under 37 CFR 1.8 is not authorized include, for example, filing of national and international applications for patents. *See* 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) is considered filed or received in the USPTO on the date of deposit with the USPS. *See* 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National application filing, and examination fees: Section 1.16, paragraphs (a) through (e), (h) through (j) and (o) through (s), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U. See Table 1.

37 CFR 1.17 Patent application and reexamination processing fees: Section 1.17, paragraphs (a)(1) through (a)(5), (l), and (m), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U. See Table 1.

37 CFR 1.18 Patent post allowance (including issue) fees: Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U. See Table 1.

37 CFR 1.20 Post issuance fees: Section 1.20, paragraphs (c)(3)–(c)(4), and (d) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U. See Table 1.

37 CFR 1.492 National stage fees: Section 1.492, paragraphs (a), (c)(2), (d) through (f) and (j), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U. See Table 1.

37 CFR 41.20 Fees: Section 41.20, paragraphs (b)(1) through (b)(3), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI–U. See Table 1.

Example of Fee Amount Adjustments: Adjusted patent statutory fee amounts based on the most recent annual increase in the CPI–U, as reported by the Secretary of Labor, will be published in the final rule implementing this CPI adjustment. Table 1 provides examples of possible fee adjustments based on the February 2011 to February 2012 annual CPI–U increase of 2.9%.

TABLE 1—HYPOTHETICAL FEE ADJUSTMENT CALCULATIONS BASED ON CPI–U ADJUSTMENT OF 2.9%

37 CFR	Fee title	Current fee amount	Hypothetical fee amount (2.9% increase)	Hypothetical fee adjustment
1.16(a)(1)	Filing of Utility Patent Application (on or after 12/8/2004)	$380 Small Entity (SE) $190.	$390 SE $195	$10. SE $5.
1.16(a)(1)	Filing of Utility Patent Application (electronic filing for small entities) (on or after 12/8/2004).	$95	$98	$3.
1.16(b)(1)	Filing of Design Patent Application (on or after 12/8/2004).	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(b)(1)	Filing of Design Patent Application (Continued Prosecution Application) (on or after 12/8/2004).	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(c)(1)	Filing of Plant Patent Application (on or after 12/8/2004)	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(d)	Provisional Application Filing	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(e)(1)	Filing of Reissue Patent Application (on or after 12/8/2004).	$380 SE $190	$390 SE $195	$10. SE $5.
1.16(e)(1)	Filing of Reissue Patent Application (CPA) (on or after 12/8/2004).	$380 SE $190	$390 SE $195	$10. SE $5.
1.16(h)	Independent Claims in Excess of Three	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(h)	Reissue Independent Claims in Excess of Three	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(i)	Claims in Excess of Twenty	$60 SE $30	$62 SE $31	$2. SE $1.
1.16(i)	Reissue Total Claims in Excess of Twenty	$60 SE $30	$62 SE $31	$2. SE $1.
1.16(j)	Multiple Dependent Claims	$450 SE $225	$460 SE $230	$10. SE $5.
1.16(o)	Utility Patent Examination	$250 SE $125	$260 SE $130	$10. SE $5.
1.16(p)	Design Patent Examination	$160 SE $80	$160 SE $80	$0. SE $0.
1.16(q)	Plant Patent Examination	$200 SE $100	$210 SE $105	$10. SE $5.
1.16(r)	Reissue Patent Examination	$750 SE $375	$770 SE $385	$20. SE $10.
1.16(s)	Utility Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	$310 SE $155	$320 SE $160	$10. SE $5.
1.16(s)	Design Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	$310 SE $155	$320 SE $160	$10. SE $5.

TABLE 1—HYPOTHETICAL FEE ADJUSTMENT CALCULATIONS BASED ON CPI–U ADJUSTMENT OF 2.9%—Continued

37 CFR	Fee title	Current fee amount	Hypothetical fee amount (2.9% increase)	Hypothetical fee adjustment
1.16(s)	Plant Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	$310 SE $155	$320 SE $160	$10. SE $5.
1.16(s)	Reissue Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	$310 SE $155	$320 SE $160	$10. SE $5.
1.16(s)	Provisional Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	$310 SE $155	$320 SE $160	$10. SE $5.
1.17(a)(1)	Extension for Response within First Month	$150 SE $75	$150 SE $75	$0. SE $0.
1.17(a)(2)	Extension for Response within Second Month	$560 SE $280	$580 SE $290	$20. SE $10.
1.17(a)(3)	Extension for Response within Third Month	$1,270 SE $635	$1,310 SE $655	$40. SE $20.
1.17(a)(4)	Extension for Response within Fourth Month	$1,980 SE $990	$2,040 SE $1,020	$60. SE $30.
1.17(a)(5)	Extension for Response within Fifth Month	$2,690 SE $1,345	$2,770 SE $1,385	$80. SE $40.
1.17(l)	Petition to Revive Unavoidably Abandoned Application	$620 SE $310	$640 SE $320	$20. SE $10.
1.17(m)	Petition to Revive Unintentionally Abandoned Application	$1,860 SE $930	$1,910 SE $955	$50. SE $25.
1.18(a)	Utility Issue	$1,740 SE $870	$1,790 SE $895	$50. SE $25.
1.18(a)	Reissue Issue	$1,740 SE $870	$1,790 SE $895	$50. SE $25.
1.18(b)	Design Issue	$990 SE $495	$1,020 SE $510	$30. SE $15.
1.18(c)	Plant Issue	$1,370 SE $685	$1,410 SE $705	$40. SE $20.
1.20(c)(3)	Reexamination Independent Claims in Excess of Three	$250 SE $125	$260 SE $130	$10. SE $5.
1.20(c)(4)	Reexamination Total Claims in Excess of Twenty	$60 SE $30	$62 SE $31	$2. SE $1.
1.20(d)	Statutory Disclaimer	$160 SE $80	$160 SE $80	$0. SE $0.
1.20(e)	First Stage Maintenance	$1,130 SE $565	$1,160 SE $580	$30. SE $15.
1.20(f)	Second Stage Maintenance	$2,850 SE $1,425	$2,930 SE $1,465	$80. SE $40.
1.20(g)	Third Stage Maintenance	$4,730 SE $2,365	$4,870 SE $2,435	$140. SE $70.
1.492(a)	Filing of PCT National Stage Application	$380 SE $190	$390 SE $195	$10. SE $5.
1.492(c)(2)	PCT National Stage Examination—All Other Situations	$250 SE $125	$260 SE $130	$10. SE $5.
1.492(d)	Independent Claims in Excess of Three	$250 SE $125	$260 SE $130	$10. SE $5.
1.492(e)	Total Claims in Excess of Twenty	$60 SE $30	$62 SE $31	$2. SE $1.
1.492(f)	Multiple Dependent Claims	$450 SE $225	$460 SE $230	$10. SE $5.
1.492(j)	PCT National Stage Application Size Fee	$310 SE $155	$320 SE $160	$10. SE $5.
41.20(b)(1)	Notice of Appeal	$620 SE $310	$640 SE $320	$20. SE $10.
41.20(b)(2)	Filing a Brief in Support of an Appeal	$620 SE $310	$640 SE $320	$20. SE $10.
41.20(b)(3)	Request for Oral Hearing	$1,240 SE $620	$1,280 SE $640	$40. SE $20.

Rulemaking Considerations

A. Initial Regulatory Flexibility Analysis

1. *Description of the reasons that action by the agency is being considered:* The USPTO is proposing to adjust the patent fees set under 35 U.S.C. 41(a) and (b) to ensure proper funding for effective operations. The patent fee CPI adjustment under 35 U.S.C. 41(f) is a routine adjustment that has generally occurred on an annual basis when necessary to recover the higher costs of USPTO operations that occur due to the increase in the price of products and services.

2. *Succinct statement of the objectives of, and legal basis for, the proposed rules:* Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the URAA, and 4506 of the AIPA. The objective of the proposed change is to adjust patent fees

set under 35 U.S.C. 41(a) and (b) as an annual, routine step in order to recover the higher costs of USPTO operations as reflected by the CPI. 35 U.S.C. 41(f) provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted every year to reflect fluctuations in the CPI over the previous twelve months.

3. *Description and estimate of the number of affected small entities:* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. The USPTO, however, has formally adopted, with SBA approval, an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is the previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on the patent application as qualifying for reduced patent fees, the USPTO captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the USPTO.

Unlike the general SBA small business size standards set forth in 13 CFR 121.201, USPTO's approved alternative size standard is not industry-specific. Specifically, the USPTO definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (November 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (December 12, 2006).

The changes in this proposed rule will apply to any small entity that files a patent application, or has a pending patent application or unexpired patent. The changes in this proposed rule will specifically apply when an applicant or patentee pays an application filing or national stage entry fee, search fee, examination fee, extension of time fee, notice of appeal fee, appeal brief fee, request for an oral hearing fee, petition to revive fee, issue fee, or patent maintenance fee.

The USPTO has been advised that a number of small entity applicants and patentees do not claim small entity status for various reasons. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67110 (November 20, 2006), 1313 *Off. Gaz. Pat. Office* at 61 (December 12, 2006). Therefore, the USPTO is also considering all other entities paying patent fees as well in an effort to capture the impact on all small entity applicants whether they claim that status or not.

4. *Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:* This notice does not propose any reporting, recordkeeping and other compliance requirements. This notice proposes only to adjust patent fees (as discussed previously) to reflect changes in the CPI.

5. *Description of any significant alternatives to the proposed rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities:* The alternative of not adjusting patent fees would have a lesser economic impact on small entities, but would not accomplish the stated objectives of applicable statutes. The USPTO is proposing a small adjustment to patent fees, under 35 U.S.C. 41(f), to ensure proper funding for effective operations in light of changes in the CPI. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis to recover the higher costs of USPTO operations that occur due to increases in the price of products and services. This CPI adjustment helps the Office maintain effective operations and decrease patent pendency levels.

6. *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rules:* The USPTO is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other Federal, state, or local entity shares jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

B. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002), and Executive Order 13422 (Jan. 18, 2007).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563 (Jan. 8, 2011). Specifically, the Office has: (1) Used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness and distributive impacts; (2) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected, by issuing this notice of proposed rulemaking and providing on-line access to the rulemaking docket; (3) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5)

ensured the objectivity of scientific and technological information and processes, to the extent applicable.

E. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

F. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

G. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

H. Executive Order 13045 (Protection of Children)

This rulemaking is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

I. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

J. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes proposed in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not likely to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

K. Unfunded Mandates Reform Act of 1995

The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

L. National Environmental Policy Act

This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

M. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rulemaking does not contain provisions which involve the use of technical standards.

N. Paperwork Reduction Act

This proposed rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The collections of information involved in this proposed rule have been reviewed and approved by OMB. The Office is not resubmitting information collection requests to OMB for its review and approval at this time because the changes proposed in this notice revise the fees for existing information collection requirements under OMB control numbers 0651–0016, 0651–0021, 0651–0024, 0651–0031, 0651–0032, 0651–0033, 0651–0063, and 0651–0064. The USPTO will submit to OMB fee revision changes for OMB control numbers 0651–0016, 0651–0021, 0651–0024, 0651–0031, 0651–0032, 0651–0033, 0651–0063, and 0651–0064 if the changes proposed in this notice are adopted.

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.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

Dated: May 8, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–11649 Filed 5–11–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0042; FRL–9672–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Offset Lithographic Printing and Letterpress Printing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland (Maryland). This revision pertains to amendments to the Code of Maryland (COMAR) 26.11.19.11, Lithographic and Letterpress Printing. Maryland's SIP revision meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) for offset lithographic printing and letterpress printing. This will help Maryland attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0042 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0042, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0042. 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On December 15, 2011, the Maryland Department of the Environment (MDE) submitted a revision to its SIP for the adoption of EPA's CTG for offset lithographic printing and letterpress printing into the Code of Maryland.

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of volatile organic compound (VOC) emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

CTGs are intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOCs from various sources, which include offset lithographic and letterpress printers. In developing these CTGs, EPA, among other things, evaluated the sources of VOC emissions from this industry and the available control approaches for addressing these emissions, including the costs of such approaches. Based on available information and data, EPA provided recommendations for RACT for offset lithographic printers and letterpress printers.

In November 1993, EPA published a draft CTG for offset lithographic printing. This CTG discusses the nature of VOC emissions from this industry, available control technologies for addressing such emissions, the costs of available control options, and other items. In June 1994, EPA published an alternative control techniques (ACT) document for states to use in developing rules based on RACT for offset lithographic printing. In 2006, after conducting a review of currently existing state and local VOC emission reduction approaches for this industry, reviewing the 1993 draft CTG and the 1994 ACT, and taking into account the information that has become available since then, EPA developed a new CTG for offset lithographic printers and letterpress printers, entitled *Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing* (*see* EPA 453/R–06–002). The CTG for offset lithographic printing and letterpress printing provides VOC control recommendations for the following components involved in offset lithographic and letterpress printing: Heatset inks, fountain solutions and cleaning materials. A detailed description of this CTG may be found in the technical support document (TSD).

II. Summary of SIP Revision

On December 15, 2011, the MDE submitted to EPA a SIP revision (#11–09) concerning the adoption of EPA's CTG for offset lithographic printing and letterpress printing. EPA develops CTGs as guidance on control requirements for source categories. States can follow the CTGs or adopt more restrictive standards. Maryland has adopted EPA's CTG standards for offset lithographic printing and letterpress printing. These regulations are in COMAR 26.11.19, Volatile Organic Compounds from Specific Processes. Specifically, this revision amends the existing regulation in Section 26.11.19.11 to include the recommendations from the aforementioned CTG. A detailed summary of EPA's review of and rationale for proposing to approve this SIP revision may be found in the TSD for this action which is available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2012–0042.

III. Proposed Action

EPA's review of this material indicates that the proposed SIP revision will reduce VOC emissions which will help maintain environmental protection and public health. EPA is proposing to approve the Maryland SIP revision for adoption of the CTG standards for offset lithographic printing and letterpress printing into the Code of Maryland. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rule concerning Maryland's adoption of the CTG for offset lithographic printing and letterpress printing 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 2, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–11650 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0208; FRL–9672–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to the requirements for meeting reasonably available control technology (RACT) for the 1997 8-hour ozone national ambient air quality standard (NAAQS). These requirements are based on: A certification that previously adopted RACT controls in Maryland's SIP, that were approved by EPA under the 1-hour ozone NAAQS, are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 1997 8-hour ozone NAAQS implementation purposes; a negative declaration demonstrating that no facilities exist in the State for the applicable control technique guideline (CTG) categories; and adoption of new or more stringent RACT determinations. This action is being taken in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0208 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0208, Cristina Fernandez, Associate Director, Office of Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0208. 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by email at *lewis.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On October 17, 2011, the Maryland Department of the Environment submitted a revision to its SIP that addresses requirements of RACT for the 1997 8-hour ozone NAAQS set forth by the CAA.

I. Background

Ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOC), oxides of nitrogen (NO_X), and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply control on VOC and NO_X emission sources to achieve emission reductions. Among effective control measures, RACT controls are a major group for reducing VOC and NO_X emissions from stationary sources.

Since the 1970's, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. EPA published final rulemaking notices approving the State of Maryland's SIP revisions in order to correct their VOC RACT regulations and establish and require the implementation for revised SIP regulations to control VOCs. *See* 58 FR 63085, November 30, 1993; 59 FR 46180, September 7, 1994; 59 FR 60908, November 29, 1994; and 60 FR 2018, January 6, 1995.

The second requirement, set forth in section 182(b)(2) of the CAA and referred to as RACT catch-up, applies to moderate (or worse) ozone nonattainment areas as well as to marginal and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA, and requires these areas to implement RACT controls on all major VOC and NO_X emission sources and on all sources and source categories covered by a CTG issued by EPA. On January 6, 1995, EPA published one of many final rulemaking notices approving the State of Maryland's SIP revision as meeting the CTG RACT provisions of the CAA. *See* 60 FR 2018, January 6, 1995.

All Maryland counties were subject to RACT requirements under the 1-hour ozone standard. The Baltimore, Washington, DC, and Cecil County, Maryland nonattainment areas were designated as severe 1-hour ozone nonattainment areas. Kent and Queen Anne's counties were designated as a marginal 1-hour ozone nonattainment area. All remaining Maryland counties were identified as part of the OTR. As part of the planning process, section 182(b)(2) of the CAA required the State of Maryland to adopt all RACT regulations for all CTG sources and all major non-CTG VOC sources (VOC sources with the potential to emit greater than or equal to 25 tons per year (TPY) in Baltimore, Washington, DC, and Cecil County, Maryland nonattainment areas and greater than or equal to 50 TPY in the remainder of the State) throughout the State.

On July 18, 1997, EPA promulgated an 8-hour NAAQS for ozone. *See* 62 FR 38856, July 18, 1997. Under the 1997 8-hour ozone NAAQS, four areas were designated nonattainment for the 1997 8-hour ozone standard in Maryland. Three areas were classified as moderate and one as marginal. Maryland also had an Early Action Compact area. All other remaining counties are part of the OTR. The three moderate 1997 8-hour ozone standard nonattainment areas are Baltimore, Washington, DC, and Cecil County (part of the Philadelphia nonattainment area). The one marginal 1997 8-hour ozone NAAQS nonattainment area consists of Kent and Queen Anne's Counties. Washington County was part of the Early Action Compact program.

EPA requires under the 1997 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP revisions be approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 1997 8-hour ozone NAAQS attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the state's SIP accurately reflects RACT for the 1997 8-hour ozone standard based on the current availability of technically and economically feasible controls. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 1997 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration that there are no CTG major sources of VOC and NO_X emissions within Maryland.

II. Summary of SIP Revision

Maryland's SIP revision contains the requirements of RACT set forth by the CAA under the 1997 8-hour ozone NAAQS. Maryland's SIP revision satisfies the 1997 8-hour ozone standard RACT requirements through (1) certification that previously adopted RACT controls in Maryland's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls and that they continue to represent RACT for the 8-hour implementation purpose; (2) a negative declaration demonstrating that no facilities exist in Maryland for the applicable CTG categories; and (3) adoption of new or more stringent RACT determinations. A detailed summary of EPA's review and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov.* Docket number EPA–R03–OAR–2012–0208.

III. Proposed Action

EPA's review of this material indicates that Maryland has met the requirements of RACT for NO_X and VOCs set forth by the CAA with respect to the 1997 8-hour ozone standard. EPA is proposing to approve the Maryland SIP revision for the requirements of RACT set forth by the CAA under the 1997 8-hour ozone NAAQS, which was submitted on October 17, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rule pertaining to Maryland RACT for the 1997 8-hour ozone NAAQS, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 2, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–11639 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2005–0033; FRL–9350–1]

RIN 2070–AD16

Revocation of TSCA Section 4 Testing Requirements for One High Production Volume Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the revocation of certain testing requirements promulgated under the Toxic Substances Control Act (TSCA) for benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]- (CAS No. 1324–76–1), also known as C.I. Pigment Blue 61. EPA is basing its decision to take this action on information received since publication of the final rule that established testing requirements for this chemical substance.

DATES: Comments must be received on or before June 13, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0033, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2005–0033. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0033. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8157; email address: *roman.catherine@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of particular interest to those persons who manufacture (defined by statute to include import), process, or export the chemical substance identified in this document. Because other persons may also be interested, the Agency has not attempted to describe all the specific persons that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. Submitting CBI.

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

2. Tips for preparing your comments.

When submitting comments, remember to:

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

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

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

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

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

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

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

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

II. Background

A. What action is the Agency taking?

EPA is proposing to amend the TSCA section 4(a) chemical testing requirements for one high production volume (HPV) chemical included in 40 CFR 799.5085. Specifically, this amendment revokes some of the testing requirements for C.I. Pigment Blue 61. EPA is basing its decision to take this action on information (discussed in Unit III.) received since publication of the final rule (Ref. 1) that established testing requirements for this chemical substance.

In the **Federal Register** of March 16, 2012 (77 FR 15609) (FRL–9335–6), EPA issued a revocation of some or all of the testing requirements for 10 chemical substances by direct final rule. EPA received an adverse comment concerning the chemical substance C.I. Pigment Blue 61. Consequently, in accordance with the procedures described in the March 16, 2012 **Federal Register** document, EPA is withdrawing the revocation of certain testing requirements for C.I. Pigment Blue 61 in a separate document published elsewhere in today's **Federal Register**, and is now issuing this proposed rule.

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

Section 4(a) of TSCA authorizes EPA to require testing if certain findings are made. The TSCA section 4(a) findings include:

1. The chemical substance was produced in substantial quantities.

2. There are insufficient data upon which the effects of manufacture, distribution, processing, use, or disposal of a chemical substance on health or the environment can reasonably be determined or predicted.

3. Testing of the chemical substance with respect to such effects is necessary to develop such data. (See TSCA section 4(a)(1)(B)(i), (ii), and (iii); see also Ref. 1).

EPA is amending the testing requirements for C.I. Pigment Blue 61 because some of the findings that EPA made for this chemical substance are no longer supported.

III. Amendment to Chemical Testing Requirements

On July 17, 2006, the Color Pigments Manufacturers Association (CPMA) submitted a test plan for C.I. Pigment Blue 61. CPMA also submitted robust summaries of existing data which CPMA asked EPA to accept as satisfying some of the Agency's data needs for C.I. Pigment Blue 61. Some of the existing data described in the summaries addressed C.I. Pigment Blue 56, a close analog of C.I. Pigment Blue 61, which CPMA requested EPA to accept as satisfying the Agency's data needs for C.I. Pigment Blue 61, providing a structure-activity relationship (SAR) argument in the test plan to justify that request (Refs. 2 and 3). CPMA also asked EPA to accept results for water solubility and octanol/water partition coefficient that were obtained by using an alternative method, due to the extremely low predicted solubility of C.I. Pigment Blue 61, instead of the methods specified by the test rule (Ref. 2). Finally, CPMA asked EPA to accept that determining a melting point for C.I. Pigment Blue 61 was not relevant because the pigment thermally decomposes before it melts (Ref. 2).

EPA reviewed the submitted information on physical/chemical properties and decided that melting point, boiling point, and vapor pressure determinations were not relevant because C.I. Pigment Blue 61 decomposes before it melts and the decomposition temperature had been reported (Ref. 4). EPA accepted the submitted data on water solubility as satisfying the Agency's data needs for that endpoint, but did not accept the calculated value submitted to satisfy the testing requirement for octanol/water partition coefficient (Ref. 4). EPA believes the calculated value would, most likely, underestimate the measured value (Ref. 4) required to be determined by the test rule.

EPA reviewed CPMA's SAR argument concerning C.I. Pigment Blue 61 and C.I. Pigment Blue 56 and agreed that C.I. Pigment Blue 56 is an acceptable

surrogate for C.I. Pigment Blue 61, thereby allowing adequate data on C.I. Pigment Blue 56 to satisfy data needs for C.I. Pigment Blue 61 (Ref. 5). As a result, a biodegradation study of C.I. Pigment Blue 56, found adequate by an EPA review, satisfies the need for biodegradation data on C.I. Pigment Blue 61 (Ref. 5). Likewise, a fish acute toxicity study and a chromosomal damage test of C.I. Pigment Blue 56, which EPA reviewed and found adequate, will satisfy the data need for those endpoints (Ref. 6) for C.I. Pigment Blue 61. EPA's review of the existing data on C.I. Pigment Blue 61 found the study on mammalian acute toxicity and the bacterial mutation assay to be adequate to satisfy the data needs for those endpoints (Ref. 6). The existing study on repeated-dose toxicity, however, did not satisfy the test requirement for that endpoint (Ref. 6).

Therefore, EPA is proposing to revoke the testing requirements for melting point, boiling point, vapor pressure, water solubility, biodegradation, fish acute toxicity, mammalian acute toxicity, bacterial reverse mutation, and chromosomal damage for C.I. Pigment Blue 61 by removing those requirements from those listed for that chemical substance in Table 2 in 40 CFR 799.5085(j). In order to clarify that test requirements for acute toxicity to Daphnia (an aquatic invertebrate) and toxicity to algae had not been satisfied by existing studies, and that the fish acute toxicity test requirement had been satisfied, the test symbol C2 replaces C1 for C.I. Pigment Blue 61 in Table 2 in 40 CFR 799.5085(j). The testing requirements for C.I. Pigment Blue 61 that are not proposed to be revoked include tests for octanol/water partition coefficient, acute toxicity to Daphnia, toxicity to algae, and combined 28-day repeated-dose toxicity with a reproduction/developmental toxicity screen. Studies responding to those test requirements were submitted to the Agency. The full studies and robust summaries (Ref. 7) are in the docket for this proposed rule, docket ID number EPA–HQ–OPPT–2005–0033.

IV. Public Comment

EPA received one adverse comment concerning the March 16, 2012 direct final rule that revoked some of the testing requirements for C.I. Pigment Blue 61 and nine other chemical substances. The comment concerned the statement in the preamble of the direct final rule that certain full studies for C.I. Pigment Blue 61 had been claimed as CBI and were therefore not available to the public, although robust summaries were available in the docket. The commenter objected to EPA's placing the robust summaries in the docket rather than applying the disclosure requirements of TSCA section 14(b) to the full health and safety studies. The submitter of these studies has subsequently withdrawn the CBI claim on these studies. The full studies and the adverse comment are included in the docket for this proposed rule, docket ID number EPA–HQ–OPPT–2005–0033.

V. Economic Analysis

In the economic impact analysis for the final rule (Ref. 1) establishing testing requirements for C.I. Pigment Blue 61 and 16 other chemical substances, the Agency estimated the total testing cost to industry to be $4.03 million for all 17 chemical substances included in that final rule, with an average of approximately $237,000 per chemical substance (Ref. 8). This total included an additional 25% in administrative costs. An amendment to the final rule revoking testing requirements for coke-oven light oil (coal) reduced the total cost to industry to an estimated $3.7 million for the remaining 16 chemical substances, with an average compliance cost of approximately $232,000 per chemical substance. This proposed rule, combined with the direct final rule revoking all or some of the test rule requirements for 9 other chemical substances (see Ref. 1), would have the effect of further reducing the total testing cost by an estimated $1.5 million (approximately 41%) (Ref. 9). In addition, the 25% administrative costs would be eliminated for these tests. The reduced total cost for the remaining 12 chemical substances is estimated to be $2.2 million (i.e., $3.7 million—$1.5 million), with an average compliance cost per chemical substance of approximately $184,000 (Ref. 9).

VI. Export Notification

Persons who export or intend to export C.I. Pigment Blue 61 are and will remain subject to TSCA section 12(b) export notification requirements (See 40 CFR part 707, subpart D).

VII. References

The following documents are specifically referenced in the preamble for this proposed rule. In addition to these documents, other materials may be available in the docket established for this proposed rule under Docket ID number EPA–HQ–OPPT–2005–0033, which you can access through *http://www.regulations.gov*. Those interested in the information considered by EPA in developing this proposed rule should also consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether the other documents are physically located in the docket.

1. EPA. Testing of Certain High Production Volume Chemicals; Final Rule. **Federal Register** (71 FR 13708, March 16, 2006) (FRL–7335–2). Document ID number EPA–HQ–OPPT–2005–0033–0001.
2. CPMA. Letter to EPA from J. Lawrence Robinson concerning existing data and test plan. July 17, 2006. Document ID number EPA–HQ–OPPT–2005–0033–0185.
3. CPMA. Letter to EPA from J. Lawrence Robinson concerning existing data and test plan. May 9, 2007. Document ID EPA–HQ–OPPT–2005–0033–0246.
4. EPA. Memorandum from Diana Darling, Industrial Chemistry Branch (ICB), Economics, Exposure, and Technology Division (EETD), OPPT to Greg Schweer, Chemical Information and Testing Branch (CITB), Chemical Control Division (CCD), OPPT. Testing requirements and existing data for physical/chemical properties of the HPV test rule chemical, C.I. Pigment Blue 61 (CAS No. 1324–76–1). May 17, 2007. Document ID number EPA–HQ–OPPT–2005–0033–0280.
5. EPA. Memorandum from Bob Boethling, Exposure Assessment Branch (EAB), OPPT to Greg Schweer, CITB, CCD, OPPT. Review of SAR argument and a biodegradation test concerning an HPV test rule chemical, C.I. Pigment Blue 61 (CAS No. 1324–76–1). May 15, 2007. Document ID number EPA–HQ–OPPT–2005–0033–0279.
6. EPA. Email and attached review from David Brooks, Risk Assessment Division (RAD), OPPT to Greg Schweer and Catherine Roman, CITB, CCD, OPPT. Review of C.I. Pigment Blue (CAS No. 1324–76–1). August 22, 2007. Document ID number EPA–HQ–OPPT–2005–0033–0286.
7. CPMA. Robust summaries submitted for C.I. Pigment Blue 61 on octanol/water partition coefficient, acute toxicity to Daphnia, toxicity to algae, and combined 28-day repeated-dose toxicity with a reproduction/developmental toxicity screen. Submitted on November 14, 2008. Document ID number EPA–HQ–OPPT–2005–0033–0318.
8. EPA. Economic Analysis for the Final Section 4 Test Rule for High Production Volume Chemicals. Prepared by Economic Policy and Analysis Branch (EPAB), EETD, OPPT. October 28, 2005. Document ID number EPA–HQ–OPPT–2005–0033–0131.
9. EPA. Email from Stephanie Suazo to Catherine Roman RE: ''Revised Economic Analysis for Revocation of Testing Requirements'' with attached economic analysis. December 14, 2009. (Document ID number EPA–HQ–OPPT–2005–0033–0350).

VIII. Statutory and Executive Order Reviews

This proposed rule only eliminates existing requirements; it does not

otherwise impose any new or revised requirements. As such, this action is not subject to review by the Office of Management and Budget (OMB) as a significant regulatory action under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Nor does it impose or change any information collection burden that requires additional review by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because this proposed rule eliminates existing requirements without imposing any new or revised requirements, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this action will not have a significant economic impact on a substantial number of small entities.

For the same reasons, it is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538), and does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in UMRA sections 203 and 204. This proposed rule does not have tribal implications, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), or federalism implications as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

Since this action is not economically significant under Executive Order 12866, it is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), and Executive Order 13211, entitled ''Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

This 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.

This proposed rule does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 799

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

Dated: May 8, 2012.

James J. Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.5085, revise the entry ''CAS No. 1324–76–1'' in Table 2 of paragraph (j) to read as follows:

§ 799.5085 Chemical testing requirements for certain high production volume chemicals.

* * * * *

(j) * * *

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CAS No.	Chemical name	Class	Required tests/ (See Table 3 of this section)
*	*	*	*
1324–76–1	Benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-.	2	A4, C2, F1.
*	*	*	*

* * * * *

[FR Doc. 2012–11491 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2012–0020]

RIN 2127–AL22

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend appendices to NHTSA regulations on Insurer Reporting Requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2009 calendar year before October 25, 2012. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25. We are proposing to add and remove several insurers from relevant appendices.

DATES: Comments must be submitted not later than July 13, 2012. Insurers listed in the appendices are required to submit reports on or before October 25, 2012.

ADDRESSES: You may submit comments, identified by DOT Docket No. NHTSA–2012–0020 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process,

see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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

Docket: For access to the docket to read background documents or comments received, go to the street address listed above. The internet access to the docket will be at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590, by electronic mail to *Carlita.Ballard@dot.gov.* Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information,* NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis.

The term ''small insurer'' is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR Part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best.[1] A.M. Best publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and 33112(e)(1) and (2),

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted.

NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine* and *Auto Rental News.*[2]

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report before October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Auto Rental News are publications that provide information on the size of fleets and market share of rental and leasing companies.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on July 13, 2011 (76 FR 41138). Based on the 2009 calendar year data market shares from A.M. Best, NHTSA proposes to remove American International Group from Appendix A and add California State Auto Group to Appendix A.

Each of the 17 insurers listed in Appendix A are required to file a report before October 25, 2012, setting forth the information required by Part 544 for each State in which it did business in the 2009 calendar year. As long as these 17 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2009, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2009 calendar year data for market shares from A.M. Best, we propose to make no change to Appendix B.

The eight remaining insurers listed in Appendix B are required to report on their calendar year 2009 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2012, and set forth the information required by Part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. NHTSA proposes to make no change to Appendix C.

Each of the remaining five companies (including franchisees and licensees) listed in Appendix C are required to file reports for calendar year 2009 no later than October 25, 2012, and set forth the information required by Part 544. As long as those five companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. The cost estimates in the 1987 final regulatory evaluation should be adjusted for inflation, using the Bureau of Labor Statistics Consumer Price Index for 2012 (see *http://www.bls.gov/cpi*). The agency estimates that the cost of compliance is $50,000 (1987 dollars) for any insurer added to Appendix A, $20,000 (1987 dollars) for any insurer added to Appendix B, and $5,770 (1987 dollars) for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would propose to remove and add one company, for Appendix B, the agency would propose to make no change, and for Appendix C, the agency would propose to make no change. The agency estimates that the net effect of this proposal, if made final, would have no cost to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Technical Reference Division, 1201 New Jersey Avenue SE., East Building, Ground Floor, Room E12–100, Washington, DC 20590, or by calling (202) 366–2588.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted to the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements''). This collection of information is approved for use through April 30, 2015, and the agency will seek to extend the approval afterwards. The existing information collection indicates that the number of respondents for this collection is thirty, however, the actual number of respondents fluctuate from year to year. Therefore, because the number of respondents required to report for this final rule does not exceed the number of respondents indicated in the existing information collection, the agency does not believe that an amendment to the existing information collection is necessary.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant

impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., (West Building) Washington, DC 20590;

b. *Email: Carlita.Ballard@dot.gov;* or

c. *Fax:* (202) 493–2990.

IV. Comments

Submission of Comments

1. How can I influence NHTSA's thinking on this proposed rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date and docket number with your comments.

2. How do I prepare and submit comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Federal eRulemaking Portal Web site at *http:www.regulation.gov.* Follow the online instructions for submitting comments.

3. How can I be sure that my comments were received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How do I submit confidential business information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above, in the same location. You may also see the comments on the Internet. To read the comments on the Internet, log onto the Federal eRulemaking Portal at *http:www.regulation.gov.*

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices B and C of 49 CFR 544, Insurer Reporting Requirements. We are also amending § 544.5 to revise the example given the recent update to the reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2012, will contain the required information for the 2009 calendar year).

* * * * *

3. Appendix A to Part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
Auto Club Enterprise Insurance Group
Auto-Owners Insurance Group
Berkshire Hathaway/GEICO Corporation Group
California State Auto Group [1]
Erie Insurance Group
Farmers Insurance Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
State Farm Group
Travelers Companies
USAA Group

4. Appendix B to Part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Safety Group (Massachusetts)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Avis Budget Group (*subsidiary of Cendant*)
Dollar Thrifty Automotive Group
Enterprise Holding Inc./Enterprise Rent-A-Car Company
Hertz Rent-A-Car Division (*subsidiary of The Hertz Corporation*)
U-Haul International, Inc. (*subsidiary of AMERCO*)

Issued on: May 8, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–11565 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–59–P

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2012.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13, 17, and 402

[Docket No. FWS–R9–ES–2011–0099; FXES11150900000A2123]

RIN 1018–AY29

Endangered and Threatened Wildlife and Plants; Expanding Incentives for Voluntary Conservation Actions Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), extend the deadline for submission of public comments to help us identify potential changes to our regulations that implement parts of the Endangered Species Act that would create incentives for landowners and others to take voluntary conservation actions to benefit species that may be likely to become threatened or endangered species. In particular, we seek comment on whether and how the Service can assure those who take such voluntary actions that the benefits of their actions will be recognized as offsetting the adverse effects of activities carried out after listing by that landowner or others. The practice of recognizing these actions, sometimes referred to as ''advance mitigation'' or ''prelisting mitigation,'' is intended to encourage early conservation efforts that could reduce or eliminate the need to list species as endangered or threatened. If you have previously submitted comments, please do not resubmit them, because we have already incorporated them into the public record and will fully consider them as we decide how we may propose changes to our regulations or policies.

DATES: Electronic comments via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern Time on July 13, 2012. Comments submitted by mail must be postmarked no later than July 13, 2012.

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

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R9–ES–2011–0099, which is the docket number for this notice. You may submit a comment by clicking on ''Submit a Comment.''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–ES–2011–0099; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments below for more details).

FOR FURTHER INFORMATION CONTACT: Jim Serfis, Chief, Office of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703–358–2171). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are considering whether and how we could revise our regulations to create incentives for landowners and others to take voluntary conservation actions to benefit species that may be likely to become threatened or endangered species, including revisions that could recognize the benefits of such conservation actions as offsetting the adverse effects of actions carried out after listing by that landowner or others. We request comments, information, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, private landowners, or any other interested parties to help us formulate any proposed regulation.

You may submit your comments and materials concerning this notice by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business

hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Background

On March 15, 2012 (77 FR 15352), we published an advance notice of proposed rulemaking and requested comments, information, and suggestions from the public on ways to improve upon current agreements or create new mechanisms to provide incentives to landowners who fund or voluntarily take conservation measures for candidates or other at-risk species. See that document for specific questions we asked and for more detailed information.

We have received a request for an extension of the comment period from the Association of Fish & Wildlife Agencies so that State fish and wildlife agencies could have adequate time to submit comments in response to the proposal. To accommodate this request, we extend the comment period for an additional 60 days.

Authority

This notice is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: May 7, 2012.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2012–11676 Filed 5–11–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 77, No. 93

Monday, May 14, 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

May 8, 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.

Animal and Plant Health Inspection Service

Title: Health Certificate for the Export of Live Crustaceans, Finfish, Mollusks, and Related Products.

OMB Control Number: 0579–0278.

Summary Of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. The Animal and Plant Health Inspection Service (APHIS) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Need and Use of the Information: APHIS requires U.S. exporters to complete an export health certificate before exporting any live crustaceans and their gametes, live finfish, and their gametes, or live mollucks and their gametes, if requested by the importing country. The certificate will be completed by an accredited veterinarian with assistance from the producer, and must be signed by the accredited veterinarian and endorsed by APHIS as the competent Federal authority who certifies the health status of the shipment being exported. The health certificate identifies the names of the species being exported from the U.S., their age and weights, and whether they are cultured stock or wild stock; their place of origin, their country of destination and the date and method of transport. If this information were not collected, or collected less frequently, export trade would decrease. These certificates allow APHIS to address the increasing health attestations of importing countries with minimal burden to the public.

Description of Respondents: Business or other for-profit.

Number of Respondents: 69.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,020.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–11480 Filed 5–11–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—An Assessment of the Roles and Effectiveness of Community-Based Organizations in the Supplemental Nutrition Assistance Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for the Food and Nutrition Service to describe the roles of community-based organizations (CBOs) in the Supplemental Nutrition Assistance Program (SNAP), and to assess if, and how, the use of CBOs to conduct SNAP applicant interviews has impacted SNAP program outcomes such as timeliness, payment error rates, access, and client satisfaction.

DATES: Written comments on this notice must be received on or before July 13, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, and (d) ways to enhance the quality, utility and clarity of the information to be collected.

Written comments may be sent to: Steven Carlson, Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at (703) 305–2576 or via email to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations,gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017. Information requests submitted through email should refer to the title of this proposal.

SUPPLEMENTARY INFORMATION:

Title: An Assessment of the Roles and Effectiveness of Community-based Organizations in the Supplemental Nutrition Assistance Program.

OMB Number: 0584–NEW.

Form Number: Not Applicable.

Expiration Date: Not yet determined.

Type of Request: New collection of information.

Abstract: To provide more timely and efficient services to the growing number of applicants to SNAP, State and local SNAP offices are partnering with CBOs that have the capacity to provide application assistance and conduct applicant interviews for SNAP. FNS has approved these partnerships as part of a demonstration of ''Community Partner Interviewer Projects.'' Although these projects have existed for several years, they have never been fully evaluated. To assess the impact of these SNAP–CBO partnerships on SNAP program outcomes, FNS is seeking to collect data from the five States that are participating in the demonstration.

The overarching goal of this study is to determine whether the use of CBOs to conduct SNAP applicant interviews has an impact on SNAP program performance, and if so, what the nature of that impact is. Specific program outcomes of interest include efficiency, payment accuracy and client satisfaction. Additionally, FNS is interested in gathering information about variations among the partnering CBOs in terms of who they serve, what services they offer, how they provide SNAP related services, and the nature of their partnerships with local SNAP offices. To address these questions, FNS has specified the following objectives:

1. Describe the CBOs conducting SNAP interviews and the nature of their partnerships with State and local SNAP agencies.

2. Describe the response of State SNAP staff to the involvement of CBOs in conducting applicant interviews.

3. Describe the response of CBO interviewers to their involvement with SNAP.

4. Describe how the experiences of SNAP applicants who are interviewed by CBO staff compare to the experiences of SNAP applicants who are interviewed by SNAP staff.

5. Describe the services that the CBOs offer.

6. Document the impacts of CBOs conducting SNAP interviews on program outcomes.

The information collection plan for this study includes interviews with: (1) State SNAP directors; (2) CBO directors; (3) local SNAP office directors and SNAP staff who train or supervise CBO partners on SNAP policies and application procedures; (4) CBO site directors and staff who are responsible for conducting SNAP applicant interviews; and (5) SNAP participants who were interviewed by SNAP or CBO staff at the time of application or recertification for SNAP. FNS will use the information collected from these sources to evaluate whether the Community Partner Interviewer Projects have helped to improve SNAP access and performance, as well as to document the ways in which the projects have been implemented in different States (e.g., with specific populations or in specific types of partners).

FNS' data collection strategy aims to maximize both efficiency and data quality. The interviews with State SNAP Directors and CBO Directors will be conducted by telephone and will last no more than 1 hour. Following the telephone interviews, FNS seeks to conduct site visits to local SNAP offices and nearby CBO locations in each State. The site visits will provide the opportunity to conduct in-person interviews with local SNAP office directors, SNAP staff, local CBO site directors and CBO staff who have been trained to conduct SNAP applicant interviews.

In addition to the telephone and in-person interviews, FNS will request two administrative files from each State. One file will be used to analyze program outcomes such as timeliness and payment error rates. The other file will include records of SNAP participants who were interviewed at a local SNAP office or a partner CBO within the timeframe of the demonstration project. This file will be used to select the sample for a client satisfaction survey.

Affected Public: State and local government; business-not-for-profit institutions; individuals or households. Respondent groups identified include: (1) State SNAP Directors; (2) employees from selected local SNAP offices; (3) CBO Directors; (4) CBO staff; and (5) SNAP participants.

Estimated Number of Respondents: The total estimated number of respondents is 2,620 across all 5 States. This estimate includes: Completed telephone surveys with 2,500 SNAP participants (500 per State, but will recruit 750 per State to account for nonrespondents and ensure the targeted number is obtained); 5 telephone interviews with SNAP Directors (1 per State); 10 telephone interviews with CBO Directors (2 per State); 20 in-person interviews with local SNAP office directors (1 per office, with 4 offices per State); 20 in-person interviews with employees of local SNAP offices (1 per office, with 4 offices per State); 20 in-person interviews with local CBO site directors; 40 interviews with local CBO site staff/interviewers (2 per office, 4 offices per State); and requests for administrative data from 5 State SNAP personnel in charge of information technology (IT)/data (1 per State).

Estimated Number of Responses per Respondent: Each respondent will be asked to respond once.

Estimated Time per Respondent: The burden estimate for State SNAP Directors is 1.25 hours, and the burden estimate for CBO directors is 1.0 hour, including time to prepare for and complete the interview. For local SNAP office directors and local CBO site directors, the burden estimate is 1.5 hours, including time for scheduling the site visit, completing the interview, and coordinating the schedules of office staff to be interviewed. For SNAP office and CBO site staff, the burden estimate is 1.0 hour each. The burden estimate for SNAP participants to complete a survey is 0.3 hours (20 minutes), including time to review the advance letter, schedule an appointment, and complete the interview.

Estimated Total Annual Burden on Respondents: The total estimated

burden on respondents is 750 hours for the SNAP participant surveys, 130 hours for State and CBO directors and staff members, and 45 hours for State SNAP IT staff (for providing administrative data files) for a total of 925 hours. See table below for a complete breakdown of burden hours. In addition, we estimate that 625 SNAP participants will be contacted but will decline participation in the survey. The burden estimate associated with these non-respondents, not shown in the table, is .08 hours each, for a total of 50 hours of burden on non-respondents.

BURDEN ESTIMATES FOR RESPONDENTS

Type of respondent	Type of instrument	Number of respondents	Frequency of response	Total responses	Average burden per response (in hours)	Total burden (in hours)
State SNAP Director	Telephone interview	5	1	5	1.25	6.25
Local SNAP Agency Director.	In person interview	20 (1 per office, 4 offices per State, 5 states).	1	20	1.5	30
Local SNAP Agency Staff.	In person interview	20 (1 per office, 4 offices per State, 5 States).	1	20	1	20
CBO Director	Telephone interview	10 (2 per State, 5 States).	1	10	1	10
Local CBO Site Director.	In person interview	20 (1 per office, 4 offices per State, 5 states).	1	20	1.5	30
Local CBO Staff	In person interview	40 (2 per office, 4 offices per State, 5 States).	1	40	1	40
Adults (18+ years of age).	Telephone survey questionnaire.	2,500 (500 per State) (completed).	1	2,500	.3	750
Adults (18+ years of age).	Telephone survey questionnaire.	1,250 (250 per State) (Nonrespondent).	1	1,250	.05	1.04
State SNAP IT Staff	Administrative data file	5	3	15	5	45
Total		3,870		3,880		926.04

Dated: May 8, 2012.

Robin Bailey, Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–11589 Filed 5–11–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Study of the Food Distribution Program on Indian Reservations (FDPIR)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This is a new information collection in which Food and Nutrition Service seeks an updated description of Food Distribution Program on Indian Reservations (FDPIR) participants and programs, and a better understanding of why FDPIR participation has been declining. This study will provide national estimates of participating households as well as estimates for large subgroups, such as households with elderly participants. For a sample of Indian Tribal Organizations (ITOs) or State-administered FDPIR programs, participating households will be selected for data collection. Data collection will consist of case record reviews (abstracting standard eligibility information for all household members) and, for each selected household, interviews with the person who applied for FDPIR assistance (noted as the Head of Household on some forms) or his/her proxy. Site visits will be conducted to a subset of the ITOs or State-administered programs to obtain qualitative information on program operations and experiences of FDPIR participants and eligible nonparticipants. Site visit data collection will include interviews with Tribal leaders, FDPIR administrators and staff, and other service providers; visits to FDPIR enrollment sites, warehouses, and distribution sites; and discussion groups with FDPIR participants and eligible nonparticipants. Information obtained will provide updated information on FDPIR participants and program operations and will be used by FNS to inform decisions regarding program administration and to identify ways to make the program more beneficial to participants.

DATES: Written comments must be received on or before July 13, 2012.

ADDRESSES: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments, identified by the title of the information activity, may be sent to Steven Carlson, Office of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via email to *Steve.Carlson@fns.usda.gov.* Comments will also be

accepted through the Federal eRulemaking Portal. Go to *http://regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, VA 22302, Room 1014.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Steven Carlson at (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: Study of the Food Distribution Program on Indian Reservations (FDPIR).

OMB Number: 0584–NEW.

Form Number: N/A.

Expiration Date: To be determined.

Type of Request: New collection of information.

Abstract: This study will provide current, nationally representative information on FDPIR participants and will provide updated information on local program operations across the nation. Information will be collected on perceptions about the program, potential access barriers, and participation in the Supplemental Nutrition Assistance Program (SNAP) and other food assistance programs in order to identify reasons for declining participation. The last nationally representative study was completed in 1990. Since then, significant changes have occurred in FDPIR, including changes to eligibility rules, foods offered, and food delivery options. This study is needed to help FNS make decisions regarding program administration and identify ways to make the program more beneficial to participants. The study's objectives include, but are not limited to:

- Obtaining an updated demographic profile of participants,
- Exploring reasons for the decline in FDPIR participation,
- Examining food package distribution approaches and other key aspects of FDPIR operations,
- Learning about FDPIR's contribution to participants' food supply, and
- Learning about participant satisfaction with the program.

The study will be conducted over a 3-year period. Data collection activities will include case record reviews, participant surveys, and site visits. A nationally-representative sample of 998 participating households will be included in the case record reviews and participant interviews. This sample will be selected at random from participating households in each of 26 FDPIR programs. Site visits to 17 programs will consist of staff interviews, discussion groups with participants and non-participants, and tours of program facilities.

Clearance is requested for the following new data collection activities: (1) Case record review/abstraction of case record data elements; (2) survey of FDPIR participants; (3) on-site interviews and observations of FDPIR program operations; and (4) discussion groups with participants and eligible nonparticipants.

In addition to primary data collection, the study will model effects of how changes in FDPIR policy, changes in household composition and characteristics, and economic factors may affect eligibility. The study will also use Census data files to consider FDPIR participation in the context of demographic and geographic shifts in the Native American population. Consultations with Tribal officials and extensive outreach to Tribes will occur in order to seek input from all FDPIR programs and to develop collaborative relationships with Tribal partners at each program in the study sample to increase survey participation.

Affected Public: State, Local, Tribal agencies; Individuals and Households.

Respondent Types: Respondents are FDPIR managers and administrative staff, Tribal leaders, and other service providers that work with or coordinate with FDPIR programs and FDPIR participants and FDPIR eligible non-participants.

Estimated Number of Respondents: Case record reviews require FDPIR staff to pull case records selected for the sample and subsequently return them to the appropriate file. One staff person at each site will be responsible for this task, for a total of 26 respondents. The total estimated number of sample members for the survey is 998. The total estimated number of respondents to the survey is 832 or 80% of the sample. The total estimated number of sample members for the on-site staff interviews is 170. A 100% response rate is anticipated for the staff interviews. The total estimated number of sample members for the focus groups is 300. The total estimated number of responses for the focus groups is 240 (80% response rate). The total number of respondents is estimated to be 1,444.

Number of Responses per Respondent: All data collection components are one-time only, and in most cases respondents will respond only once. Some FDPIR management or administrative staff may be providing case record data as well as participating in on-site staff interviews, and a small number of FDPIR participants may respond to the survey and participate in a discussion group.

Estimated Time per Response: The estimated average response time for obtaining the case record is 15 minutes. The estimated average response time is 30 minutes for the survey, 60 minutes for the on-site staff interviews, and 120 minutes to participate in the discussion group.

Estimated Total Annual Burden on Respondents: The estimated response time in hours is 249.5 for the case record review, 421.8 for the survey, 170.0 for the on-site staff interviews, and 489.6 for the discussion groups.

Affected public	Respondent type	Type of instrument		Estimated number of respondents	Frequency of response	Estimated total annual responses	Time per respondent (in hours)	Annual burden hours
State, Local and Tribal Agencies.	FDPIR admin. staff.	Case record reviews.	Completed*	26	38.38	998	0.25	249.5
	Tribal leaders, FDPIR managers and staff, other service providers.	On-site staff interviews.	Completed*	170 (17 sites; 10 respon-dents per site).	1	170	1	170
SA Sub-total	.....	.....	.....	196	.....	1,168	.....	419.5

Affected public	Respondent type	Type of instrument		Estimated number of respondents	Frequency of response	Estimated total annual responses	Time per respondent (in hours)	Annual burden hours
Individuals/ Households.	FDPIR participants.	HH survey	Completed	832	1	832	0.5	416
			Attempted	116		116	0.05	5.8
	FDPIR participants; eligible non-participants.	Discussion groups.	Completed	240 (20 groups; 12 per group).	1	240	2	480
			Attempted	60	1	60	0.16	9.6
I/H Sub-total				1,248.00		1,248.00		911.4
Total Estimated Reporting Burden.				1,444.00		2,416.00		1,330.90

*NOTE: FNS expects 100 percent participation from State Agencies.

Dated: May 7, 2012.

Robin Bailey, Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–11590 Filed 5–11–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2012]

Foreign-Trade Zone 45—Portland, OR, Notification of Proposed Production Activity, Shimadzu USA Manufacturing, Inc. (Chromatograph and Mass Spectrometer Production), Canby, OR

The Port of Portland, grantee of FTZ 45, submitted a notification of proposed production activity on behalf of Shimadzu USA Manufacturing, Inc. (Shimadzu), for its facility located in Canby, Oregon. An application for subzone status at the facility was also submitted and will be processed under Section 400.31 of the Board's regulations. The facility is used for the production of chromatographs, mass spectrometers and related equipment such as liquid chromatograph pumps, fraction collectors, auto samplers, lab instruments, controllers, and column ovens.

Production under FTZ procedures could exempt Shimadzu from customs duty payments on the foreign status components used in export production. On its domestic sales, Shimadzu would be able to choose the duty rates during customs entry procedures that apply to the finished equipment (duty free to 2.7%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad include: Ethanol; naphthalenes; mineral oil; sulfuric acid; nitric acid; phosphoric acid; silica gel sacs; deionized water; trimethylpentane; benzene; anthracene; methanol; isopropyl alcohol; ethylene glycol; acetone; perfluorotributylamine; primer; nitrile function compounds, including acetonitrile and nitrophenol; silicone compounds; lubricating oils; grease; adhesives; photographic film; activated carbon; sealing compounds; articles of plastic, including pipes, hoses and fittings, film, sheets, shapes, bags, bottles, lids and caps; hardware and fasteners; self-adhesive labels and tapes; sponges; articles of rubber, including belts, o-rings, gaskets, seals, and stoppers; wood cases; self-adhesive paper; direct thermal paper; cleaning wipes; cardboard boxes; notebooks and binders; filter paper; technical books and manuals; textile-covered foam shielding; ceramic hardware and fittings; lab glassware; wool and fiberglass insulation; glass insulator pins; gold-plated screws; plungers and ball seat sets of semi-precious stones; zinc-coated wire; articles of stainless steel, including bars; pipes, tubing, fittings, mesh, and hardware; brass and copper hardware; articles of aluminum, including washers, sheets and foil; bearings, hand tools; metal fittings; pumps; fans; refrigeration and freezing equipment; heat exchangers; filtering equipment; work holders and jigs; computer equipment; mechanical appliances; metal machined parts; valves; bearings; transmission parts; gears; pulleys; motors; transformers; power supplies; magnets; magnetic parts; lithium-ion batteries; column ovens; heaters and parts; recording media; capacitors; resistors; fuses; sensors; switches; lamp holders; connectors; terminals; programmable controllers; control panel assemblies; lamps; LEDs; photo sensors; diodes; EEPROMs; wires and cables (including fiber optic cable); insulators; filters; lenses; mirrors; prisms; other optical elements; flat panel displays; thermometers; electrical pressure gauges; measuring instruments and sensors; chromatographs and parts; spectroscopes and parts; and other testing machines (duty rates range from free to 10.7%). The request indicates that certain bearings are subject to an antidumping/countervailing duty (AD/CVD) order. The FTZ regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD actions be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 25, 2012.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible *via www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 8, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–11652 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Extension of Time Limit for Preliminary Results of the Third Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

Background

On November 30, 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 steel wire garment hangers from the People's Republic of China (''PRC'') covering the period, October 1, 2010, through September 30, 2011.[1] On December 22, 2011, the Department selected Shanghai Wells Hanger Co., Ltd. (''Shanghai Wells'') and Shaoxing Liangbao Metal Manufactured Co., Ltd. (''Shaoxing Liangbao''), as mandatory respondents in the above referenced review.[2] On December 28, 2011, the Department issued a non-market economy antidumping questionnaire to Shanghai Wells and Shaoxing Liangbao.[3] As stated in the cover letter of our questionnaire, the deadlines for Section A was January 18, 2012, and for Sections C and D were February 3, 2012.[4] Shaoxing Liangbao did not respond to the Department's Section A questionnaire and did not request an extension by the stated deadline.

On February 6, 2012, we selected an additional mandatory respondent, Pu Jiang County Command Metal Products Co., Ltd (''Pu Jiang'') as a replacement for Shaoxing Liangbao.[5] In our cover letter, we established a Section A questionnaire response deadline of February 27, 2012.[6] Pu Jiang did not respond to the Department's Section A questionnaire and did not request an extension by the stated deadline.

On March 8, 2012, we selected Shaoxing Shunji Metal Clotheshorse Co., Ltd. (''Shaoxing Shunji'') as a replacement mandatory respondent for Pu Jiang and served its U.S. counsel with the questionnaire.[7] In our cover letter, we established a Section A questionnaire response deadline of March 29, 2012.[8] Shaoxing Shunji did not respond to the Department's Section A questionnaire and did not request an extension by the stated deadline.

On April 9, 2012, we selected Shaoxing Zhongbao Metal Manufactured Co., Ltd. (''Shaoxing Zhongbao'') as a replacement mandatory respondent and served its U.S. counsel with the questionnaire.[9] In our cover letter, we established a Section A questionnaire response deadline of April 30, 2012.[10] Shaoxing Zhongbao did not respond to the Department's Section A questionnaire and did not request an extension by the stated deadline.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

Extension of Time Limit of Preliminary Results

The preliminary results are currently due on July 2, 2012. The Department determines that completion of the preliminary results of this review within the statutory time period is not practicable because of an ongoing surrogate country selection issue.[11] Thus, the Department requires more time to gather and analyze surrogate country and value information, review questionnaire responses, and issue supplemental questionnaires. The current date of the preliminary results does not afford the Department adequate time to gather and analyze surrogate country and value information, request supplementary information, and allow parties to fully participate in the proceeding.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department finds that it is not practicable to complete the preliminary results within the original time period and, thus, the Department is extending the time limit for issuing the preliminary results by 120 days until October 30, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 8, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–11654 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 74041 (November 30, 2011).

[2] *See* Memorandum to James Doyle, Director, Office 9, from Irene Gorelik, Senior International Trade Compliance Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Mandatory Respondents (December 22, 2011).

[3] *See* Letters to Shanghai Wells and Shaoxing Liangbao from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-market Economy Questionnaire (December 28, 2011).

[4] *See id.*

[5] *See* Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Compliance Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (February 6, 2012).

[6] *See* Letter to Pu Jiang from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Non-market Economy Questionnaire (February 6, 2012).

[7] *See* Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Compliance Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (March 8, 2012).

[8] *See* Letter to Shaoxing Shunji from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Non-market Economy Questionnaire (March 8, 2012).

[9] *See* Memorandum to James C. Doyle, Director, Office 9, from Kabir Archuletta, International Trade Compliance Analyst, Office 9, regarding Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (April 9, 2012).

[10] *See* Letter to Shaoxing Zhongbao from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Non-market Economy Questionnaire (April 9, 2012).

[11] *See* Letter from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Third Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for the Surrogate Country and Surrogate Value Comments (March 2, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determination by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC'') would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of the antidumping duty order.

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

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3964 and (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (Act).[1] The Department conducted an expedited sunset review of this order. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2]

On April 27, 2012, the ITC issued its determination pursuant to section 751(c) of the Act that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6500, and 2005.99.9700 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[4] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on fresh garlic from the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of the order will be the effective date listed above. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of this continuation of the antidumping duty order.

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: May 8, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–11609 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 54430 (September 1, 2011).

[2] *See Fresh Garlic from the People's Republic of China:* Final Results of Expedited Sunset Review of the Antidumping Duty Order, 77 FR 777 (January 6, 2012).

[3] *See Fresh Garlic From China; Determination,* 77 FR 26579 (May 4, 2012).

[4] Effective January 10, 2002, HTSUS subheading 0711.90.60 was replaced by 0711.90.65. *See Proclamation 7515—To Modify the Harmonized Tariff Schedule of the United States, To Provide Rules of Origin Under the North American Free Trade Agreement for Affected Goods, and for Other Purposes,* 66 FR 66549 (December 26, 2001). Effective February 3, 2007, HTSUS subheading 2005.90.97 was replaced by 2005.99.97. *See Proclamation 8097—To Modify the Harmonized Tariff Schedule of the United States, To Adjust Rules of Origin Under the United States-Australia Free Trade Agreement and for Other Purposes By the President of the United States of America,* 72 FR 453 (January 4, 2006).

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review; Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 1, 2012, the Department of Commerce (''the Department'') published a notice in the **Federal Register** that incorrectly identified the antidumping duty order for which a five-year review (''Sunset Review'') was being initiated.[1] This notice is a correction.

DATES: *Effective Date:* May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

In the *Initiation Notice* published in the **Federal Register** on May 1, 2012, the

[1] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 25683 (May 1, 2012) (''*Initiation Notice*'')

Department incorrectly identified ''Activated Cabron [sic]'' from the People's Republic of China as the antidumping duty order for which a five-year review (''Sunset Review'') was being initiated. The Department is now correcting that notice: the antidumping duty order order for which the Department is inititiating a sunset review is Polyester Staple Fiber from China. The initiation is effective May 1, 2012.

Correction of Initiation of Review

In accordance with 19 CFR 351.218(c), effective May 1, 2012, we are initiating the Sunset Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–905	731–TA–709	China	Polyester Staple Fiber (1st Review)	Jennifer Moats (202) 482–5047.

Effect of Correction of Initiation Notice

Additional information concerning the Department's Sunset proceedings can be found in the ''Filing Information'' and ''Information Required From Interested Parties'' sections of the *Initiation Notice*.[2] All filing requirements and deadlines under section 751(c) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.218 for the above-identified Sunset Review were established with publication of the *Initiation Notice* on May 1, 2012. Because of the circumstances requiring this correction of the *Intiation Notice,* and pursuant to 19 CFR 351.302(b), the Department will consider requests from interested parties for the extension of the deadlines established by 19 CFR 351.218(d)(1)(i) for filing of a notice of intent to particpate, by 19 CFR 351.218(d)(2)(i) for filing of a statement of waiver, and by 19 CFR 351.218(d)(3)(i) for filing of a substantive response.

This correction of the notice of initiation is published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 8, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–11607 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See id.* at 25684.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812, A–583–849]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik (Vietnam) or Paul Walker (Taiwan), Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–6905 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2012, the Department of Commerce (''Department'') initiated antidumping duty investigations of steel wire garment hangers from the Socialist Republic of Vietnam (''Vietnam'') and Taiwan.[1] The period of investigation (''POI'') for the Vietnam investigation is April 1, 2011, through September 30, 2011, and the POI for the Taiwan investigation is October 1, 2010, through September 30, 2011. The current deadline for the preliminary determinations of these investigations is June 6, 2012.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to complete its preliminary determinations for these investigations no later than 140 days after the date of issuance of the initiation (*i.e.,* June 6, 2012).

On April 27, 2012, M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, ''Petitioners'') made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determinations with respect to Vietnam and Taiwan. Petitioners requested postponement of the preliminary determinations of the antidumping duty investigations so that they have adequate time to analyze and comment upon the responses of the various companies selected as respondents.[2]

[1] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations,* 77 FR 3731 (January 25, 2012).

[2] *See* Letter from Petitioners, re; ''Request for Extension of Time for Preliminary Determination,'' dated April 27, 2012.

For the reason stated by Petitioners, and because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations with respect to Vietnam and Taiwan by 50 days to July 26, 2012, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e). In accordance with section 735(a)(1) of the Act, the deadline for the final determinations of these antidumping duty investigations will continue to be 75 days after the date of these preliminary determinations, unless extended at a later date.

This notice is issued and published in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 8, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–11658 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its Coastal Pelagic Species Advisory Subpanel (CPSAS) and Coastal Pelagic Species Management Team (CPSMT). A listening station will be available at the Pacific Council offices for interested members of the public.

DATES: The conference call will be held Monday, June 11, 2012 from 11 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held via conference call, with a public listening station available at the Pacific Council offices: 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the conference call is to discuss a proposed harvest parameters workshop, forage fish issues (on the Pacific Council's agenda for its June meeting), and potential changes to streamline the CPS exempted fishing permit protocol. Other items that may be discussed include the Stock Assessment and Fishery Evaluation document, the upcoming Canadian trawl survey review meeting, and Pacific mackerel management for 2012–13.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSAS or CPSMT's intent to take final action to address the emergency.

Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: May 9, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–11541 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council (NPFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet via teleconference.

DATES: The teleconference will be held on May 31, 2012, from 9 a.m. to 11 a.m. Alaska time.

ADDRESSES: Event address for attendees: *https://npfmc.webex.com/npfmc/onstage/g.php?d=992449749&t=a* For the teleconference only: US TOLL: 1–650–479–3207; Access code: 992 449 749

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: This public meeting will occur during the scoping period for the Steller Sea Lion Protection Measures EIS (77 FR 22750, April 17, 2012). Information on EIS development, potential alternatives, and issues for analysis may be discussed. The public is encouraged to attend in this meeting, however, comments specific to the EIS should be submitted in writing to NMFS before the close of the scoping period on October 15, 2012. More information on the EIS scoping process and instructions for submitting written public comments are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/default.htm.* Additional information is posted on the Council Web site: *http://www.alaskafisheries.noaa.gov/npfmc/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: May 9, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–11542 Filed 5–11–12; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 17 May 2012, at 10:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: May 7, 2012, in Washington, DC.

Thomas Luebke,

AIA, Secretary.

[FR Doc. 2012–11545 Filed 5–11–12; 8:45 am]

BILLING CODE 6331–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning AmeriCorps Application Instructions: State Commissions; State and National Competitive; Professional Corps; Indian Tribes; States and Territories without Commissions; and State and National Planning. Applicants will respond to the questions included in this ICR in order to apply for funding through these grant competitions.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 13, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's email address system: *aborgstrom@cns.gov* or *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by email at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including 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).

Background: These application instructions will be used by applicants for funding through AmeriCorps State and National grant competitions.

Current Action: The Corporation seeks to renew and revise the current AmeriCorps State and National Application Instructions. The Application Instructions are being revised to accurately describe new performance measurement screens. The Application Instructions will be used in the same manner as the existing Application Instructions. The Corporation also seeks to continue using the current Application Instructions until the revised Application Instructions are approved by OMB. The current Application Instructions are due to expire on April 30, 2015.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: State Commissions; State and National Competitive; Professional Corps; Indian Tribes; States and Territories without Commissions; and State and National Planning.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, Local and Tribal.

Total Respondents: 654.

Frequency: Annually.

Average Time per Response: 24 hours.

Estimated Total Burden Hours: 15,696 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 7, 2012.

Rosa Moreno-Mahoney,

Acting Director, AmeriCorps State and National.

[FR Doc. 2012–11554 Filed 5–11–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Missouri River (North Dakota) Task Force (hereafter referred to as ''the Task Force'').

The Task Force shall provide independent advice and recommendations on plans and projects to reduce siltation of the Missouri River in the State of North Dakota, as described in this notice and in Section 705 of Title VII, the Missouri River Protection and Improvement Act of 2000, Public Law 106–541.

The Task Force shall provide independent advice and recommendations to the Secretary of the Army on plans and projects to reduce siltation of the Missouri River in the State of North Dakota and to meet the objectives of the Pick-Sloan Program. Specifically, the Task Force shall: Prepare and approve, by a majority of the members, a plan for the use of the funds made available under Public Law 106–541, to promote conservation practices in the Missouri River watershed, control and remove the sediment from the Missouri River, protect recreation on the Missouri River from sedimentation, and protect Indian and non-Indian historical and cultural sites along the Missouri River from erosion; develop and recommend to the Secretary of the Army for implementation critical restoration projects meeting the goals of the plan; and determine if these projects primarily benefit the Federal Government.

The Task Force shall report to the Secretary of the Army and the U.S. Army Corps of Engineers. As prescribed by Public Law 106–541, the Task Force shall be composed of not more than twenty members. Specifically, the Task Force membership shall be composed of: The Secretary of the Army or designee, who shall serve as the Chairperson; the Secretary of Agriculture or designee; the Secretary of Energy or designee; the Secretary of the Interior or designee; and The Trust.

The Trust is composed of sixteen members to be appointed by the Secretary of the Army, including: Twelve members recommended by the Governor of North Dakota that represent equally the various interest of the public. Included in these twelve members, there shall be recommendations of representatives of the North Dakota Department of Health, the North Dakota Parks and Recreation Department, the North Dakota Department of Game and Fish, the North Dakota State Water Commission, the North Dakota Indian Affairs Commission, agricultural groups, environmental or conservation groups, the hydroelectric power industry, recreation user groups, local governments, and other appropriate interests. The Trust also shall include one member recommended by each of the four Indian Tribes in the State of North Dakota.

These individuals recommended for The Trust shall be appointed by the Secretary of the Army as representative members to the Task Force. All Task

Force members shall be appointed for two-year terms and generally will serve no more than four years total on the Task Force, or as determined by the Secretary of the Army or designee. In addition, all Task Force members shall, with the exception of travel and per diem for official travel, serve without compensation. This same term of service limitation also applies to any DoD authorized subcommittees.

With DoD approval, the Task Force is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the FACA, the Government in the Sunshine Act, and other appropriate Federal statutes and regulations.

Such subcommittees or working groups shall not work independently of the chartered Task Force, and shall report all their recommendations and advice to the Task Force for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions on behalf of the chartered Task Force; nor can they report directly to the Department of Defense or any Federal officers or employees.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Task Force shall meet at the call of the Task Force's Designated Federal Officer, in consultation with the Task Force's Chairperson. The estimated number of Task Force meetings is no less than two per year.

In addition, the Designated Federal Officer is required to be in attendance at all Task Force and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Task Force or subcommittee meeting.

Pursuant to 41 CFR §§ 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Task Force membership about the Task Force's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Task Force.

All written statements shall be submitted to the Designated Federal Officer for the Task Force, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Task Force Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Task Force. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 8, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–11482 Filed 5–11–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Planning, Evaluation and Policy Development; Evaluation of the 21st Century Community Learning Centers State Competitions

SUMMARY: This study will examine state subgrant competitions conducted under the 21st Century Community Learning Centers (CCLC) program in order to glean ''lessons learned'' that can inform efforts to improve the state capacity for conducting state competitions for similarly-structured grant programs under the Elementary and Secondary Education Act of 1965, as amended. More specifically, the study will examine how states conduct their 21st CCLC competitions; state-level conditions and capacity issues affecting the conduct of such competitions; how states evaluate the quality of local applications and plans; and potential strategies for improvement.

DATES: Interested persons are invited to submit comments on or before June 13, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04807. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the 21st Century Community Learning Centers State Competitions.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 153.

Total Estimated Number of Annual Burden Hours: 153.

Abstract: Evaluation findings will support federal- and state-level staff in developing a deeper understanding of the capacity of states to carry out subgrant competitions, highlight factors that are important to consider in administering a state grant competition, and assist states in developing high-quality grant programs that meet the

community needs. Additionally, the results from this review will inform the Department's technical assistance and monitoring activities.

Dated: May 9, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–11603 Filed 5–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Planning, Evaluation and Policy Development; Exploratory Study on the Identification of English Learners With Disabilities

SUMMARY: The purpose of this study is to learn more about current processes and personnel involved in the identification of English Learners (ELs) for special education services.

DATES: Interested persons are invited to submit comments on or before July 13, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04831. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Exploratory Study on the Identification of English Learners with Disabilities.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 126.

Total Estimated Number of Annual Burden Hours: 258.

Abstract: The study has two main components: (1) A review of recent research on the identification of ELs with special needs, and (2) case studies of nine school districts and two schools in each district. Findings will be descriptive in nature. The study is not a program evaluation and does not purport to assess program outcomes; however, findings may be useful in informing a future, nationally representative study.

Dated: May 8, 2012.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–11477 Filed 5–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training Program for Federal TRIO Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Training Program for Federal TRIO Programs (Training Program).

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.103A.

DATES:

Applications Available: May 14, 2012.

Deadline for Transmittal of Applications: June 13, 2012.

Deadline for Intergovernmental Review: August 13, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Training Program provides grants to train the staff and leadership personnel employed in, participating in, or preparing for employment in, projects funded under the Federal TRIO Programs to improve the operation of these projects.

Priorities: This notice contains five absolute priorities and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv) and 34 CFR 75.105(b)(2)(ii), the absolute priorities are from section 402G(b) of the Higher Education Act of 1965, as amended (HEA), and the regulations for this program (34 CFR 642.24). The competitive preference priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: Each year, the Training Program projects must offer training covering every topic listed within the applicable priority or priorities. And, each year, one or more Training Program projects must provide training for new project directors. Each applicant must identify in its application how it will meet this requirement as provided in 34 CFR 642.11.

Absolute Priorities: For FY 2012 and any subsequent year in which the Department makes awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities. Each application must address one of these absolute priorities. An applicant must submit a separate application for each absolute priority it proposes to address.

These priorities are:

Absolute Priority 1. Training to improve: Reporting student and project performance; and the rigorous evaluation of project performance in order to design and operate a model TRIO project.

Number of expected awards: 1.

Maximum award amount: $250,000.

Absolute Priority 2. Training on: Budget management, and the statutory

and regulatory requirements for operation of projects funded under the Federal TRIO Programs.

Number of expected awards: 1.

Maximum award amount: $250,000.

Absolute Priority 3. Training on: Assessment of student needs; retention and graduation strategies, including both secondary and postsecondary retention and graduation strategies; and the use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

Number of expected awards: 1.

Maximum award amount: $325,000.

Absolute Priority 4. Training on: Assisting students in receiving adequate financial aid from programs assisted under Title IV of the HEA and from other programs; college and university admissions policies and procedures; and proven strategies to improve the financial literacy and economic literacy of students, including topics such as basic personal finance information, household money management and financial planning skills, and basic economic decision making skills.

Number of expected awards: 1.

Maximum award amount: $250,000.

Absolute Priority 5. Training on: Strategies for recruiting and serving hard to reach populations—including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths (as this term is defined in Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a), students who are foster care youth, or other disconnected students.

Number of expected awards: 1.

Maximum award amount: $325,000.

Competitive Preference Priorities: For FY 2012 and any subsequent year in which the Department makes awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional five points to an application that meets Competitive Preference Priority 1, up to an additional five points to an application that meets Competitive Preference Priority 2, and up to an additional five points to an application that meets Competitive Preference Priority 3, depending on how well the application meets each of these priorities. The maximum competitive preference points an application can receive under this competition is 10. An applicant submitting an application under Absolute Priority 1 may apply using only Competitive Preference Priorities 2 or 3 or both. An applicant submitting an application under Absolute Priority 2 may apply using only competitive Preference Priority 3. An applicant submitting an application under Absolute Priorities 3, 4, or 5 may apply using all three Competitive Preference Priorities.

These priorities are:

Competitive Preference Priority 1—Turning Around Persistently Lowest-Achieving Schools (Up to 5 Additional Points)

Background: The Department is using Competitive Preference Priority 1 because an essential element in strengthening our education system is dramatic improvement of student performance in each State's persistently lowest-achieving schools. These schools often require intensive interventions to improve the school culture and climate, strengthen the school staff and instructional program, increase student attendance and enrollment in advanced courses, provide more time for learning, and ensure that social services and community support are available for students in order to raise student achievement, graduation rates, and college enrollment rates.

Competitive Preference Priority 1: Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

(c) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Note 1: For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009 or FY 2010 applications to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *http://www2.ed.gov/programs/sif/index.html*.

Note 2: Applicants choosing to address this priority might want to consider describing how they will train project directors, project staff, high school staff, and personnel of Upward Bound and Talent Search projects to turn around persistently lowest-achieving schools. Training must focus on services and activities that are authorized in the legislation and relevant to high school students. Training may be provided on basic skills instruction, counseling, assessment of student needs, college and university admissions, student financial aid, tutorial programs, and the coordination of project activities with other available resources and activities.

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (Up to 5 Additional Points)

Background: The Department is using Competitive Preference Priority 2 because the Department believes that the effective use of data to make informed decisions is essential to the continuous improvement of educational results. We believe that inclusion of this competitive preference priority is important because accurate, timely, relevant, and appropriate data are key to knowing what is working for students and what is not. Data can show which students are on track to college- and career-readiness and which students need additional support, which instructional strategies are working, and which schools or institutions are successfully improving student learning and performance. Data can also show which teachers or faculty excel in increasing student achievement so that they can, for example, be given the opportunity to coach others or to lead communities of professional practice.

The Training Program grant competition represents an opportunity to develop training for TRIO project directors and the high school staff/personnel with whom they work to strengthen their capacity to make data-based decisions for their TRIO projects. TRIO grantees must set project objectives that are based on verifiable data taken from reliable sources that will be measured by cohort or class over time. In addition, all TRIO grantees are required to report project outcomes relative to their approved objectives in their Annual Performance Reports. All grantees use standard approved objectives that are measurable longitudinally and individual student data can be aggregated in many programs. Therefore, it is essential that grantees know how to use data obtained from State longitudinal systems or third parties to compare and contrast the efficacy of the performance and delivery of student services. Moreover, as they analyze project data to find ways of improving and enhancing reliable reporting on student outcomes, having access to and using data from local and State longitudinal databases are invaluable for TRIO projects in succeeding years of the grant cycle. Grantees can also use data to identify best practices. In sum, having access to and using reliable State or third-party data sources is a key component of

running an efficient and effective TRIO project.

Competitive Preference Priority 2: Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Competitive Preference Priority 3—Improving Productivity (Up to 5 Additional Points)

Background: The Department is using *Competitive Preference Priority 3—Improving Productivity* because it believes that it is more important than ever to support TRIO projects that are designed to significantly increase efficiency in the use of resources while improving student outcomes. A key performance measure for the Training Program is its cost effectiveness, based on the number of TRIO project personnel receiving training each year. Furthermore, cost per participant is considered in all TRIO programs. Applicants proposing projects designed to offer increased opportunities to provide high-quality training for more individuals—that is, decrease their cost per participant while improving participant outcomes will be more likely to perform well on this efficiency measure.

The Department is also emphasizing productivity in other TRIO competitions for 2012. Accordingly, both new and existing grantees will need assistance learning about, selecting, and implementing strategies that can help them be more productive while improving student outcomes. As such, we are interested in projects that propose to work with projects to adopt productivity improving strategies.

Competitive Preference Priority 3: Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note 1: The types of projects identified above are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant within the context of a particular application. Therefore, applicants addressing this priority might want to consider explaining how they will provide training opportunities to the same or an increased number of individuals at a lower cost per participant while improving the quality of their training support. Applicants might also want to consider describing how they will achieve this productivity by increasing efficiency in the use of resources.

Maximum number of applications: In accordance with 34 CFR 642.7, each application must clearly identify the specific absolute priority for which a grant is requested and must address each of the topics listed under that specific absolute priority. An application for a grant under a specific absolute priority must address only that absolute priority. A grantee who wants to apply under more than one absolute priority must submit separate applications for each absolute priority. If an applicant submits more than one application for the same absolute priority, we will accept only the application with the latest ''date/time received'' validation, and we will reject all other applications the applicant submits for that priority.

For example, an application for a grant under Absolute Priority 1 must address only training described under that priority.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and they apply to the competitive preference priorities in this competition.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Open educational resources means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under Section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State, and local requirements regarding privacy.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–17.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98 and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 642. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,400,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding the maximum award amount listed for the applicable priority, listed as follows, for a single budget period of 12 months:

- Absolute Priority 1: $250,000.
- Absolute Priority 2: $250,000.
- Absolute Priority 3: $325,000.
- Absolute Priority 4: $250,000.
- Absolute Priority 5: $325,000.

The Assistant Secretary for Postsecondary Education may change the maximum award amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education and other public and private nonprofit institutions and organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Suzanne Ulmer, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@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 a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 50 pages. However, any application addressing the competitive preference priorities may include up to four additional pages for each priority addressed in a separate section of the application submission to discuss how the application meets the competitive preference priority or priorities. These additional pages cannot be used for or transferred to the project narrative. Partial pages will count as a full page toward the page limit. For purposes of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in figures and graphs. Text in charts and tables may be single-spaced. You should also include a table of contents in the project narrative, which will not be counted against the 50-page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I—the Application for Federal Assistance face sheet (SF 424); Part II—the Budget Information Summary form (ED Form 524); Part III–A—the Program Profile form; Part III–B—the one-page Project Abstract form; and Part IV—the Assurances and Certifications. If you include any attachments or appendices, these items will be counted as part of Part III—the Project Narrative for purposes of the page limit requirement. You must include your complete response to the selection criteria and priorities in Part III—The Project Narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 14, 2012.

Deadline for Transmittal of Applications: June 13, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 13, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR part 642.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Training Program—CFDA Number 84.103A must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Training Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.103, not 84.103A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document Format) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit

your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time, or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Eileen Bland, U.S. Department of Education, 1990 K Street NW., room 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.103A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.103A) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priorities they have addressed. The priorities addressed in the application must also be listed on the Training Program Profile Sheet.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 642.21 and are listed in the application package.

2. *Review and Selection Process:* A panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 642.21. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 642.22, the Secretary will award prior experience points to eligible applicants by evaluating the applicant's current performance under its expiring Training program grant. Pursuant to 34 CFR 642.22(b)(1), prior experience points, if any, will be added to the application's averaged peer review score to determine the total score for each application.

Under Section 402A(c)(3) of the HEA, the Secretary is not required to make awards under the Training Program for Federal TRIO Programs in the order of the scores received by the application in the peer review process and adjusted for prior experience.

In the event a tie score exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation in order to assure accessibility to the greatest number of prospective training participants, consistent with 34 CFR 642.20(e).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may

impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or, is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the Training Program is measured by its cost-effectiveness based on the number of TRIO project personnel receiving training each year; the percentage of Training Program participants that, each year, evaluate the training as benefiting them in increasing their qualifications and skills in meeting the needs of disadvantaged students; and the percentage of Training Program participants that, each year, evaluate the trainings as benefiting them in increasing their knowledge and understanding of the Federal TRIO Programs. All grantees will be required to submit an annual performance report documenting their success in training personnel working on TRIO-funded projects, including the average cost per trainee and the trainees' evaluations of the effectiveness of the training provided. The success of the Training Program also is assessed on the quantitative and qualitative outcomes of the training projects based on project evaluation results.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Suzanne Ulmer, or if unavailable, contact Eileen S. Bland, U.S. Department of Education, 1990 K Street NW., room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@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.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 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 this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 9, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–11621 Filed 5–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, U.S. Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice to revise the system of records notice for the Office of the Inspector General Data Analytics System (18–10–02). The Department amends this system of records notice by: (1) Clarifying the purposes of the system and adding that a purpose of the system is to coordinate relationships with other Federal, State, local, or foreign agencies or other public authorities responsible for assisting in the investigation, prosecution, oversight, or enforcement of violations of administrative, civil, or criminal law or regulations; (2) proposing to revise routine use (1), ''Disclosure for Use by Other Law Enforcement Agencies,'' to allow for the disclosure of information to a Federal, State, local, or foreign agency or other public authority responsible for assisting the Department in the investigation, prosecution, oversight, or enforcement of violations of administrative, civil, or criminal law or regulations; (3) proposing to revise routine use (12), ''Disclosure to the President's Council on Integrity and Efficiency (PCIE),'' to allow disclosure

to its successor entity, the Council of Inspectors General for Integrity and Efficiency or any successor entity; (4) revising the safeguards of the system to allow data in the system to be accessed by authorized users; and, (5) updating the person listed as the System Manager.

DATES: The Department seeks comments on the revised routine uses of the information in the altered system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before June 13, 2012.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 9, 2012. This altered system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on June 18, 2012 unless OMB waives 10 days of its 40-day review period, in which case on June 8, 2012, or (2) June 13, 2012, unless the system of records needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the revised routine use that results from public comment or OMB review of this notice.

ADDRESSES: Address all comments about the proposed routine uses to this altered system of records to Charles Coe, Assistant Inspector General for Information Technology Audits and Computer Crime Investigations, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue SW., Room 8129, Potomac Center Plaza (PCP) building, Washington, DC 20202–1510. If you prefer to send comments by email, use the following address: *comments@ed.gov*.

You must include the term ''OIG Data Analytics System'' in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education, PCP Building, Room 8166, 500 12th Street SW., Washington, DC 20202–0028, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Shelley Shepherd, Assistant Counsel to the Inspector General, 400 Maryland Avenue SW., room 8166, PCP building, Washington, DC 20202–1510. Telephone: (202) 245–7077. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records (5 U.S.C. 552a(e)(4) and (11)). The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b. The Department first published notice of the Office of the Inspector General Data Analytics System (18–10–02) in the **Federal Register** on October 16, 2008 (73 FR 61406).

The Privacy Act applies to information about an individual that contains individually identifying information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare a report to OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. The report is intended to permit an evaluation of the probable or potential effect of the proposal on the privacy rights of individuals.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 9, 2012.

Kathleen S. Tighe,

Inspector General.

For the reasons discussed in the preamble, the Inspector General of the U.S. Department of Education publishes a notice of an altered system of records. The following amendments are made to the Notice of New System of Records entitled ''The Office of Inspector General Data Analytics Program (ODAS)'' (18–10–02), as published in the **Federal Register** on October 16, 2008 (73 FR 61406–61412):

1. On page 61409, third column, under the heading ''PURPOSE(S)'', the paragraph is revised to read as follows:

PURPOSES:

This system of records is maintained for purposes of: (1) Enabling the Office of Inspector General (OIG) to fulfill the requirements of section (4)(a)(1), (3), and (4) of the Inspector General Act of 1978, as amended, which require OIG to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Department; to conduct, supervise and coordinate activities for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud, and abuse in, the programs and operations of the Department; and to conduct, supervise, or coordinate relationships between other Federal, State, and local agencies with respect to matters relating to economy and efficiency, or the prevention and detection of fraud, and abuse in programs and operations of the Department or the identification and

prosecution of participants in such fraud, or abuse; (2) improving the efficiency, quality, and accuracy of existing data collected by the Department; (3) conducting data modeling for indications of fraud, waste, and abuse, and internal control weaknesses concerning Department programs and operations, the results of which may be used in the conduct of audits, investigations, inspections, or other activities as necessary to promote economy and efficiency and to prevent and detect fraud, waste, and abuse in Department programs and operations; and (4) coordinating relationships with other Federal, State, local, or foreign agencies or other public authorities responsible for assisting in the investigation, prosecution, oversight, or enforcement of violations of administrative, civil, or criminal law or regulations.

2. On page 61410, first column, under the heading ''Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes for Such Uses'', the paragraph labeled ''(1) *Disclosure for Use by Other Law Enforcement Agencies'',* is revised to read as follows:

''(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information from this system of records as a routine use to any Federal, State, local, foreign agency, or other public authority responsible for enforcing, investigating, prosecuting, overseeing, or assisting in the enforcement, investigation, prosecution, or oversight of, violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, prosecutorial, or oversight responsibility of the Department or of the receiving entity.''

3. On page 61411, first column, under the heading ''Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes for Such Uses'', the paragraph labeled ''*Disclosure to the President's Council on Integrity and Efficiency (PCIE)'',* is revised to read as follows:

''(12) *Disclosure to the Council of Inspectors General for Integrity and Efficiency (CIGIE).* The Department may disclose records as a routine use to members and employees of the CIGIE, or any successor entity, for the preparation of reports to the President and Congress on the activities of the Inspectors General.''

4. On page 61411, 2nd column, under the heading labeled ''Safeguards'', paragraphs 1 and 2 are revised to read as follows:

''Access to data in ODAS is restricted to authorized users and is recorded in an access log. All physical access to the Department's site where this system of records is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. All data maintained in the system of records are kept on a secured and restricted private network and stored in a combination locked computer laboratory. ODAS is housed within a secure and controlled computer lab. Physical access to the lab is by authorized OIG personnel only. The general public does not have access to ODAS.

All information stored in this system is secured by using database encryption technology and is resistant to tampering and circumvention by unauthorized users. Access to data by all users will be monitored using both automated and manual controls. The information is accessed by users either on a ''need to know'' and intended systems usage basis or pursuant to a published routine use and consistent with the purposes of the system.

5. On page 61411, 3rd column, under the heading ''SYSTEM MANAGER AND ADDRESS'', the paragraph is revised to read as follows:

SYSTEM MANAGER AND ADDRESS:

Director, Computer Assisted Assessment Techniques, Information Technology Audits and Computer Crimes Investigations, Department of Education, Office of Inspector General, 400 Maryland Avenue SW., PCP, Washington, DC 20202–1510.

[FR Doc. 2012–11617 Filed 5–11–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 6, 2012—8:30 a.m. to 5:00 p.m. and Thursday, June 7, 2012—8:30 a.m. to 12:00 p.m.

ADDRESSES: Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20877.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290. Phone 301–903–9817; fax (301) 903–5051 or email: *david.thomassen@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://science.energy.gov/ber/berac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- Update from the Office of Biological and Environmental Research
- Update/highlights from the Biological Systems Science and Climate and Environmental Sciences Divisions
- Committee discussion of charge on the development and use of new tools
- Science talks
- New Business
- Public Comment

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Issued in Washington, DC, on May 8, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–11633 Filed 5–11–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental

Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 7, 2012—8:30 a.m.–5:00 p.m.

Friday, June 8, 2012—8:30 a.m.–3:00 p.m.

ADDRESSES: Red Lion Hotel, 1101 North Columbia Center Boulevard, Kennewick, WA 99336.

FOR FURTHER INFORMATION CONTACT: Tifany Nguyen, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–3361; or Email: *tifany.nguyen@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Draft Advice
  - 300 Area Remedial Investigation/Feasibility Study and Proposed Plan
  - State of the Site Meetings
  - Waste Treatment Plant Safety Culture
  - Delay on Implementing Record of Decision for the Tank Closure and Waste Management Environmental Impact Statement
- Discussion Topics
  - Committee Reports
  - Preliminary Fiscal Year (FY) 2013 Board Work Plan Priorities
  - Preliminary FY 2013 Board Calendar
  - Tri-Party Agreement Agency Updates
  - Board Business, including identification of the nominating committee for Board Chairperson
  - Introduction to 'Hanford Advisory Board Values' Advice Development

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tifany Nguyen at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tifany Nguyen at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Tifany Nguyen's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC, on May 8, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–11635 Filed 5–11–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–12–000]

Commission Information Collection Activities (FERC–576); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–576, Report of Service Interruptions.

DATES: Comments on the collection of information are due July 13, 2012.

ADDRESSES: You may submit comments (identified by Docket No. IC12–12–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at: *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–576, Report of Service Interruptions.

OMB Control No.: 1902–0004.

Type of Request: Three-year extension of the FERC–576 information collection requirements with no changes to the current reporting requirements.

Abstract: A natural gas company must obtain Commission authorization to engage in the transportation, sale, or exchange of natural gas in interstate commerce under the Natural Gas Act (NGA).[1] The NGA also empowers the Commission to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected under FERC–576 notifies the Commission of: (1) Damage to jurisdictional natural gas facilities as a result of a hurricane, earthquake, or other natural disaster, or terrorist activity, (2) serious interruptions to service, and (3) damage to jurisdictional natural gas facilities due to natural disaster or terrorist activity, that creates the potential for serious delivery problems on the pipeline's own system or the pipeline grid.

Filings (in accordance with the provisions of section 4(d) of the NGA)[2] must contain information necessary to advise the Commission when a change in service has occurred. Section 7(d) of the NGA[3] authorizes the Commission to issue a temporary certificate in cases of emergency to assure maintenance of adequate service or to serve particular customers, without notice or hearing.

Respondents to the FERC–576 may submit the initial reports by email to *pipelineoutage@ferc.gov.* 18 CFR 260.9(b) requires that a report of service interruption or damage to natural gas facilities state: (1) The location of the service interruption or damage to natural gas pipeline or storage facilities; (2) The nature of any damage to pipeline or storage facilities; (3) Specific

[1] Public Law 75 688; 15 U.S.C. 717 & 717w.

[2] (15 U.S.C. 717c).

[3] (15 U.S.C. 717f).

identification of the facilities damaged; (4) The time the service interruption or damage to the facilities occurred; (5) The customers affected by the service interruption or damage to the facilities; (6) Emergency actions taken to maintain service; and (7) Company contact and telephone number. The Commission may contact other pipelines to determine available supply, and if necessary, authorize transportation or construction of facilities to alleviate the problem in response to these reports.

A report required by 18 CFR 260.9(a)(1)(i) of damage to natural gas facilities resulting in loss of pipeline throughput of storage deliverability shall be reported to the Director of the Commission's Division of Pipeline Certificates at the earliest feasible time when pipeline throughput or storage deliverability has been restored.

In any instance in which an incident or damage report involving jurisdictional natural gas facilities is required by Department of Transportation (DOT) reporting requirements under the Natural Gas Pipeline Safety Act of 1968, a copy of such report shall be submitted to the Director of the Commission's Division of Pipeline Certificates, within 30 days of the reportable incident.[4]

If the Commission failed to collect these data, it would lose the ability to monitor and evaluate transactions, operations, and reliability of interstate pipelines and perform its regulatory functions.

Type of Respondents: Pipeline and storage company operators.

Estimate of Annual Burden:[5] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–576 (IC12–12–000): REPORT OF SERVICE INTERRUPTIONS

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Submittal of original email	40	2	80	1	80
Submittal of damage reports	40	1	40	.25	10
Submittal of DOT incident report	40	1	40	.25	10
Total					100

The total estimated annual cost burden to respondents is $6,901 [100 hours ÷ 2080 hours[6] per year = 0.04808 * $143,540/year[7] = $6,900.96].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 8, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11579 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

[4] 18 CFR 260.9(d).

[5] Burden is defined as 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. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[6] 2080 hours = 40 hours/week * 52 weeks (1 year).

[7] Average annual salary per employee in 2012.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–10–000]

Commission Information Collection Activities (FERC–545); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, Gas Pipeline Rates: Non-Formal, FERC–545.

DATES: Comments on the collection of information are due July 13, 2012.

ADDRESSES: You may submit comments (identified by Docket No. IC12–10–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–545, Gas Pipeline Rates: Non-Formal.

OMB Control No.: 1902–0154.

Type of Request: Three-year extension of the FERC–545 information collection requirements with no changes to the current reporting requirements.

Abstract: The FERC–545 information collection applies to filings made pursuant to the Natural Gas Act (NGA)[1]

[1] 15 U.S.C. 717c–717o, Public Law 75–688, 52 Stat. 822 and 830.

and the Natural Gas Policy Act (NGPA)[2] by regulated entities. The filings enable the Commission to monitor the activities and to evaluate transactions of regulated entities. Additionally, these filings allow customers and interested parties to monitor, participate, and influence pipeline tariff changes.

Type of Respondents: Entities regulated pursuant to the NGA and NGPA.

Estimate of Annual Burden:[3] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–545 (IC12–10–000): GAS PIPELINE RATES: NON-FORMAL

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
General (e.g. Tariff modifications resulting from Commission orders)	164	7	1,148	40	45,920
Standard Rate Case Issues (e.g. Compliance, Cost of Service)	15	2	30	7,500	225,000
Reports (Informational Filings)	47	2	94	12	1,128
Negotiated Rates	57	7	399	12	4,788
Non-Conforming Agreements	50	3	150	12	1,800
NAESB (Tariff Only)	82	2	164	40	6,560
Total					285,196

The total estimated annual cost burden to respondents is $19,681,266 [285,196 hours ÷ 2,080[4] hours/year = 137.11346 * $143,540/year[5] = $19,681,266].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11578 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13590–001]

Lockhart Power Company, Inc.; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 13590–001.

c. *Date filed:* August 31, 2010.

d. *Applicant:* Lockhart Power Company, Inc.

e. *Name of Project:* Riverdale Hydroelectric Project.

f. *Location:* On the Enoree River, near Enoree, in Spartanburg and Laurens counties, South Carolina. The proposed project would not affect any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bryan D. Stone, Chief Operating Officer, Lockhart Power Company, Inc., 420 River Street, P.O. Box 10, Lockhart, SC 29364; (864) 545–2211.

i. *FERC Contact:* Sarah Florentino at (202) 502–6863, or via email at *Sarah.Florentino@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

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 *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person 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. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing, currently non-operational, Riverdale Project consists

[2] 15 U.S.C. 3393, Public Law 95–621.

[3] Burden is defined as 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. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] 2080 hours/year = 40 hours/week * 52 weeks/year.

[5] Average annual salary per employee in 2012.

of: (1) A 12-foot high, 425-foot-long concrete gravity dam with 2-foot flashboards; (2) a 6.6-acre impoundment; (3) a headrace leading to a 110-foot-long steel penstock; (4) a powerhouse containing a single 1.24-megawatt turbine-generator unit; (5) a 510-foot-long tailrace channel; and (6) appurtenant facilities. The proposed project would generate about 5,318 megawatt-hours annually. Lockhart Power Company, Inc. proposes to repair or upgrade the turbine unit and return the project operation.

m. A copy of the application 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on, or before, the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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 protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 2 (if necessary).	May 2012.
Notice of application is ready for environmental analysis.	July 2012.
Notice of the availability of the EA.	April 2013.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11570 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–224]

South Carolina Public Service Authority; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 199–224.

c. *Date Filed:* April 3, 2012.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Hydroelectric Project.

f. *Location:* The proposed non-project use would be located on Upper Lake Marion in Clarendon County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. David L. Evans, Manager, Property Management, South Carolina Public Service Authority, P.O. Box 2946101, Moncks Corner, SC 29461–6101, (843) 761–4068.

i. *FERC Contact:* Shana High at (202) 502–8674, or email: *shana.high@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* June 6, 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.* 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–199–224) on any comments, motions, or recommendations filed.

k. *Description of Application:* South Carolina Public Service Authority requests Commission authorization to permit Jack's Creek Marina to redevelop and expand its existing commercial facility. The redevelopment would expand the existing 4.39 acre commercial facility to include an adjoining 4.65 acre parcel of land. Major components of the 9.04 acre commercial property would include a boat ramp, 106-slip marina, fuel and sewage pump-out services, restrooms, parking, shops, restaurant, swimming pool, rental cottages, boardwalk, wooden deck, and remote parking for boat trailers.

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 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 Responsive 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 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. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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. A copy of all other filings in reference to this application 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: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11575 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–24–000]

Liberty Energy (Midstates) Corp.; Notice of Baseline Filing

Take notice that on April 30, 2012, Liberty Energy (Midstates) Corp. submitted a baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (NGPA) to comply with a Delegated Letter Order issued March 30, 2012, in Docket No. CP12–42–000 (138 FERC ¶ 61,249).

Any person desiring to participate in this rate proceeding must file a motion 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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 14, 2012.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11573 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–65–000]

RC Cape May Holdings, LLC v. *PJM Interconnection, L.L.C.*; Notice of Complaint

Take notice that on May 7, 2012, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(e), 825(e), and 825(h), RC Cape May Holdings, LLC (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (Respondent) alleging that Respondent violated the requirements of its open access transmission tariff (Tariff) and the filed rate doctrine by incorrectly calculating transmission line ratings that resulted in creating artificial congestion and thereby artificially suppressed the locational marginal prices (LMPs) received by Complainant from June 4, 2010 to June 25, 2010. Complainant requests that the Commission direct Respondent to refund to Complainant the amount that Complainant would have received if Respondent had correctly calculated LMPs in accordance with Respondent's filed rate.

The Complainant states that a copy of the Complaint has been served on the contact for the Respondent as listed on the Commission list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 29, 2012.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11577 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–64–000]

Linden VFT, LLC v. *New York Independent System Operator, Inc.*; Notice of Complaint

Take notice that on May 4, 2012, pursuant to section 206 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Linden VFT, LLC (Linden VFT or Complainant) filed a formal complaint against New York Independent System Operator, Inc. (NYISO or Respondent), alleging that the Respondent failed to recognize the actual transmission capacity of Linden VFT in the same manner as similarly situated projects is unduly discriminatory.

Linden VFT certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 24, 2012.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11576 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–128–001]

SourceGas Arkansas Inc.; Formerly Arkansas Western Gas Company; Notice of Compliance Filing

Take notice that on April 27, 2012, SourceGas Arkansas Inc formerly known as Arkansas Western Gas Company submitted a revised Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on April 24, 2012.

Any person desiring to participate in this rate proceeding must file a motion 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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 14, 2012.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11571 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–7–001]

SourceGas Distribution LLC; Notice of Compliance Filing

Take notice that on April 30, 2012, SourceGas Distribution LLC (SourceGas) filed a revised Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on April 24, 2012.

Any person desiring to participate in this rate proceeding must file a motion 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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 14, 2012.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11572 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–25–000]

Eagle Rock Desoto Pipeline, L.P.; Notice of Petition for Rate Approval

Take notice that on May 1, 2012, Eagle Rock Desoto Pipeline, L.P. (Desoto) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations. Desoto proposes to utilize rates that are the same as those contained in Desoto's transportation rate schedules for comparable intrastate service on file with the Railroad Commission of Texas as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Monday, May 14, 2012.

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11580 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS12–214–000]

Dixie Pipeline Company LLC; Notice of Technical Conference

Take notice that the Commission will convene a technical conference on Wednesday, May 30, 2012, at 9:00 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426.

The technical conference is being held pursuant to the Commission's April 27, 2012 order addressing Dixie's FERC Tariff No. 6.1.0.[1] The technical conference will address the issues raised by the protesters in the proceeding and the issues discussed by the Commission in P 19 of the April 27, 2012 order concerning the effect of Dixie's proposed new butane/isobutane service on its overall system operations.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact David Faerberg at (202) 502–8275 or email *david.faerberg@ferc.gov.*

Dated: May 7, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–11574 Filed 5–11–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OAR–2012–0290; A–1–FRL–9672–6]

Adequacy Status of the Submitted 2008 and 2022 VOC and NO_X Motor Vehicle Emissions Budgets for Transportation Conformity Purposes; New Hampshire; Boston-Manchester-Portsmouth (SE), New Hampshire, 8-Hour Ozone Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: EPA is notifying the public that EPA has found that the 2008 and 2022 motor vehicle emissions budgets in the March 2, 2012 New Hampshire State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The submittal includes MOVES2010 motor vehicle emissions budgets for 2008 and 2022 for the Boston-Manchester-Portsmouth (Southeast), New Hampshire 8-hour ozone area. As a result of our finding, the State of New Hampshire must use these motor vehicle emissions budgets for future conformity determinations for the Boston-Manchester-Portsmouth

[1] *Dixie Pipeline Company LLC,* 139 FERC ¶61,073 (2012).

(Southeast), New Hampshire 8-hour ozone area.

DATES: These motor vehicle emissions budgets are effective May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1668, fax number (617) 918–0668, email *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us'' or ''our'' is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA New England sent a letter to the New Hampshire Department of Environmental Services on April 25, 2012, stating that the 2008 and 2022 MOVES2010 motor vehicle emissions budgets (MVEBs) in the March 2, 2012 SIP are adequate for transportation conformity purposes. This submittal will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm,* (once there, click on ''What SIP submissions has EPA already found adequate or inadequate?''). The adequate 2008 and 2022 MVEBs are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGETS

	VOC (tons per summer day)	NO_X (tons per summer day)
Year 2008 MVEBs for the Boston-Manchester-Portsmouth (Southeast), New Hampshire 8-Hour Ozone Area.	17.8	37.2
Year 2022 MVEBs for the Boston-Manchester-Portsmouth (Southeast), New Hampshire 8-Hour Ozone Area.	8.9	11.8

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 2, 2012.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2012–11648 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0333 FRL–9671–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for the Greenhouse Gas Reporting Program; EPA ICR No. 2300.10

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2012. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0333, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA Headquarters West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20240. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0333. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any

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

FOR FURTHER INFORMATION CONTACT:

Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2012–0333, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the EPA 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 EPA Air and Radiation Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

[Docket ID No. EPA–HQ–OAR–2012–0333.]

Affected entities: Entities potentially affected by this action are suppliers of certain products that will emit GHG when released, combusted, or oxidized, motor vehicle and engine manufacturers, including aircraft engine manufacturers; facilities in certain industrial categories that emit greenhouse gases; and facilities that emit 25,000 metric tons or more of carbon dioxide equivalent (CO_2e) per year.

Title: Information Collection Request for the Greenhouse Gas Reporting Program.

ICR numbers: EPA ICR No. 2300.10, OMB Control No. 2060–0629.

ICR status: This ICR is currently scheduled to expire on November 30, 2012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA'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: In response to the FY2008 Consolidated Appropriations Act (H.R. 2764; Pub. L. 110–161) and under authority of the Clean Air Act, the EPA finalized the Mandatory Reporting of Greenhouse Gases Rule (GHG Reporting Rule) (74 FR 56260; October 30, 2009). The GHG Reporting Rule, which became effective on December 29, 2009, establishes reporting requirements for some direct GHG emitters as well as suppliers of certain products that will emit GHG when released, combusted, or oxidized, industrial gas suppliers, and manufacturers of heavy-duty and off-road vehicles and engines. It does not require control of greenhouse gases. Instead, it requires that sources emitting above certain threshold levels of (CO_2e) monitor and report emissions.

Subsequent rules provide corrections and clarification on existing requirements; include requirements for additional facilities and suppliers; require reporters to provide information about parent companies, NAICS code(s), and whether emissions are from cogeneration; and finalize confidentiality determinations. Specifically, in 2010 and 2011, the EPA promulgated requirements for subparts T, FF, II, and TT (75 FR 39736; July 12, 2010); information about parent companies, NAICS code(s), and cogeneration (75 FR 57669; September 22, 2010); subpart W (75 FR 74458; November 30, 2010); subparts I, L, DD, QQ, and SS (75 FR 74774; December 1, 2010); subparts RR and UU (75 FR 75060; December 1, 2010); and confidentiality determinations (76 FR 30782; May 26, 2011). Collectively, the GHG Reporting Rule and its associated rulemakings are referred to as the Greenhouse Gas Reporting Program (GHGRP).

The purpose for this ICR is to renew and revise the GHG Reporting Rule ICR to update and consolidate the burdens and costs imposed by all of the current ICRs under the GHGRP.

Data submitted under the GHGRP that is classified as CBI is protected under the provisions of 40 CFR part 2, subpart B. The EPA is determining through a series of rulemaking actions the data elements that will be eligible for treatment as CBI. However, according to CAA section 114(c), ''emissions data'' cannot be classified as CBI. The EPA has proposed that inputs to emissions equations meet the definition of ''emissions data'' and cannot be afforded the protections of CBI. The EPA has deferred the reporting deadline for data elements that are used as inputs to emissions equations to provide the EPA time needed to fully evaluate and resolve issues regarding the reporting and potential release of these data (76 FR 53057, August 25, 2011).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.96 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.

The ICR provides a detailed explanation of the EPA's estimate, which is only briefly summarized here:

1. *Estimated total number of potential respondents:* 11,290.

2. *Frequency of response:* Annual, quarterly.

3. *Estimated total average number of responses for each respondent:* 43.

4. *Estimated total annual burden hours:* 1,000,914 hours. This includes estimated total respondent hours of 942,344 hours and estimated total EPA hours of 58,570 hours.

5. *Estimated total annual costs:* $98,082,191. This includes an estimated cost of $28,086,090 for capital investment as well as maintenance and operational costs, an estimated respondent burden cost of $56,141,455, and an estimated EPA cost of $13,854,646.

Are there changes in the estimates from the last approval?

There is a decrease of 764,890 hours in the total estimated respondent burden compared with the combined burden in the currently approved ICRs for the GHGRP identified in the ICRs currently approved by OMB (2060–0629, –0646, –0647, –0649, –0650, –0651, and –0680). This decrease reflects the completion of one-time activities that occurred in the first year of data collection as well as adjustments in the number of respondents based on facilities that reported information to the EPA. This change is the result of an adjustment.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 27, 2012.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2012–11630 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0104; FRL–9516–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Brownfields Program—Accomplishment Reporting (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 June 13, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0104, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.superfund@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–2745; fax number (202) 566–1476; email address: *Lentz.Rachel@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 10, 2012 (77 FR 7143), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which was not relevant to this ICR, and is not addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2012–0104, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund 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 Superfund Docket is 202–566–9744.

Use the 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 the 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 the

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: Brownfields Program—Accomplishment Reporting (Renewal).

ICR numbers: EPA ICR No. 2104.04, OMB Control No. 2050–0192.

ICR Status: This ICR is scheduled to expire on July 31, 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 the 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 Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) (''the Brownfields Amendments'') was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes the EPA to award cooperative agreements to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfield site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For funding purposes, the EPA uses the term ''brownfield property(ies)'' synonymously with the term ''brownfield sites.'' The Brownfields Amendments authorize the EPA to award several types of cooperative agreements to eligible entities on a competitive basis.

Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, States, tribes, local governments, and other eligible entities can receive assessment cooperative agreements to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup cooperative agreements to carry out cleanup activities at brownfields properties; cooperative agreements to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training cooperative agreements to support the creation and implementation of environmental job training and placement programs. Under Subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, State and tribes can receive cooperative agreements to establish and enhance their response programs. The cooperative agreements support activities necessary to establish or enhance four elements of state and tribal response programs and to meet the public record requirements under the statute. The four elements eligible for funding include: (a) Timely survey and inventory of brownfield sites in the State or in the tribal land; (b) oversight and enforcement authorities or other mechanisms and resources; (c) mechanisms and resources to provide meaningful opportunities for public participation; and (d) mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes that receive funding under subtitle C must establish a public record system during the funding period unless an adequate public record system is already established.

Cooperative agreement recipients (recipients) have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 40 CFR Parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). The EPA requires Brownfields program recipients to maintain and report additional information to the EPA on the uses and accomplishments associated with the funded brownfields activities. The EPA uses several forms to assist recipients in reporting the information and to ensure consistency of the information collected. The EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Land Revitalization Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

This ICR addresses the burden imposed on recipients that are associated with those reporting and recordkeeping requirements that are specific to cooperative agreements awarded under the Small Business Liability Relief and Brownfields Revitalization Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.22 hours per response. It is estimated to average 4 hours per response for Job Training recipients, and 1.25 hours per response for subtitle A assessment, cleanup, and revolving loan fund and subtitle C recipients. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 procedures 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: State, Local, and Tribal Governments.

Estimated Number of Respondents: 1,007.

Frequency of Response: Bi-Annual for subtitle C recipients; Quarterly for subtitle A recipients.

Estimated Total Annual Hour Burden: 3,167 hours.

Estimated Total Annual Cost: $308,911, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 13,383 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This reflects the EPA's updating of burden estimates for this collection based on an increase in number of experienced recipients familiar with reporting requirements, a lowered number of responses based on previous data submission, and improvements in the Assessment, Cleanup and Redevelopment Exchange System (ACRES) reporting database.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–11500 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0251; FRL–9516–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 13, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0251, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Enforcement and Compliance Assurance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0251, which is available for public viewing online at *http://www.regulations.gov* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards (Renewal).

ICR Numbers: EPA ICR Number 1871.06, OMB Control Number 2060–0420.

ICR Status: This ICR is scheduled to expire on June 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart YY. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

These regulations apply to existing facilities and new facilities of the following four categories: Polycarbonates (PC) Production, Acrylic and Modacrylic Fibers (AMF) Production, Acetal Resins (AR) Production, and Hydrogen Fluoride (HF) Production. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart YY.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart YY, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that has been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 124 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of source categories: Generic maximum achievable control technology standards for acetal resin; acrylic and modacrylic fiber; hydrogen fluoride and polycarbonate production.

Estimated Number of Respondents: 10.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 3,718.

Estimated Total Annual Cost: $554,916, which includes $424,571 in labor costs, no capital/startup costs, and $130,345 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in costs in the most recently approved ICR. The increase in burden cost is due to adjustments in labor rates. This ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

There is a decrease of 286 labor hours for the respondents related to typographical error in the previous ICR. There is no change in the estimation methodology for labor hours to the respondents. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for respondents is very low, negative, or non-existent.

There is an increase in O&M costs to the respondents as compared to the previous ICR. The O&M costs were updated based on comments received during consultation with the affected entities, and the increase reflects the costs associated with the maintenance and calibration of emission controls and monitors.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–11499 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0252; FRL–9516–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Asbestos (Renewal).

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 13, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0252, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance and Enforcement Acceptance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0252, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Asbestos (Renewal)

ICR Numbers: EPA ICR Number 0111.13, OMB Control Number 2060–0101.

ICR Status: This ICR is scheduled to expire on June 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 61, subpart M.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average two hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously-applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of demolition and renovation of facilities; the disposal of asbestos waste; asbestos milling, manufacturing and fabricating; the use of asbestos on roadways; asbestos waste conversion facilities; and the use of asbestos insulation and sprayed-on materials.

Estimated Number of Respondents: 9,517.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 226,407.

Estimated Total Annual Cost: $21,694,083, which includes $21,694,083 in labor costs exclusively; there are neither capital/startup nor operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated labor hours from the most recently approved ICR. The decrease is due to a mathematical correction in the previously approved ICR, which overestimated the burden for the respondents. However, there is an overall increase in labor costs to the respondents due to an increase in labor rates.

There is an increase in Agency hours and costs from the most recently approved ICR. The increase is due to a growth in the respondent universe in the past three years, and labor rate increases. This ICR uses updated labor rates for each of the three labor categories when estimating burden costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–11495 Filed 5–11–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 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 July 13, 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: 3060–0010.

Title: Ownership Report for Commercial Broadcast Stations, FCC Form 323.

Form Number: FCC Form 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 9,250 respondents; 9,250 responses.

Estimated Time per Response: 2.5 hours to 4.5 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; biennially reporting requirement.

Total Annual Burden: 38,125 hours.

Total Annual Costs: $26,940,000.

Nature of Response: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Form 323 collects two types of information from respondents: personal information in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The FCC is in the process of publishing a system of records notice (SORN), FCC/MB–1, ''Ownership Report for Commercial Broadcast Stations,'' to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. FCC Form 323 will include a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII. This privacy statement will be finalized and included with the form instructions after the Commission has published the SORN for the collection.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060–0917). Form 160 requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic CORES Registration System then provides each registrant with a FCC Registration Number (FRN), which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy. The Commission maintains a SORN, FCC/OMD–9, ''Commission Registration System (CORES)'' to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

Privacy Act Impact Assessment: The FCC is in the process of publishing a system of records notice (SORN), FCC/MB–1, ''Ownership Report for Commercial Broadcast Stations,'' to cover the collection, purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. The FCC will publish the SORN in the **Federal Register**. Going forward, if the FCC makes substantive changes to Form 323 after its SORN is published, the Commission will conduct a full Privacy Impact Assessment of FCC/MB–1 SORN, publish a Notice in the **Federal**

Register, and post both documents on the FCC Web page, as required by the Office of Management and Budget (OMB) Memorandum, M–03–22 (September 22, 2003).

Needs and Uses: Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television stations must file FCC Form 323 every two years. Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Thereafter, the Form shall be filed biennially beginning November 1, 2011, and every two years thereafter.

Also, Licensees and Permittees of commercial AM, FM, or full power television stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television station license or construction permit; a Permittee of a new commercial AM, FM or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee if the filing is a nonbiennial filing or a reportable interest in the Licensee if the filing is a biennial filing.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–11568 Filed 5–11–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

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: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 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 July 13, 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 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: 3060–0931.

Title: Section 80.103, Digital Selective Calling (DSC) Operating Procedures—Maritime Mobile Identity (MMSI).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities and Federal Government.

Number of Respondents: 40,000 respondents; 40,000 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirements.

Obligation To Respond: Required to obtain or retain benefits. There is no statutory authority for this information collection. The reporting requirements are in international agreements and ITU–R M.541–9.

Total Annual Burden: 10,000 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: Yes. The Commission maintains a system of records notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records,'' that covers this collection, purpose(s), storage, safeguards and disposal of the Personally Identifiable Information (PII) that marine VHF radio licensees maintain under 47 CFR section 80.103.

Nature and Extent of Confidentiality: There is a need for confidentiality with respect to all owners of Marine VHF radios with Digital Selective Calling (DSC) capability in this collection. Pursuant to section 208(b) of the E-Government Act of 2002, 44 U.S.C. section 3501, in conformance with the Privacy Act of 1974, 5 U.S.C. 552(a), the Wireless Telecommunications Bureau (WTB or Bureau) instructs licensees to use the FCC's Universal Licensing System (ULS), Antenna Structure Registration (ASR), Commission Registration System (CORES) and related systems and subsystems to submit information. CORES is used to receive an FCC Registration Number (FRN) and password, after which one must register all current call signs and ASR numbers associated with a FRN within the Bureau's system of records (ULS database). Although ULS stores all information pertaining to the individual license via the FRN, confidential information is accessible only by persons or entities that hold the password for each account, and the Bureau's Licensing Division staff. Upon the request of a FRN, the individual licensee is consenting to make publicly available, via the ULS database, all information that is not confidential in nature.

Information on the marine VHF radios with DSC capability is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. FRN numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR section 0.459 of the Commission's rules, will not be made available for public inspection. Any PII that individual applicants provide is covered by a

system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in the system of records notice.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain the full three year approval from OMB. There is no change to the Commission's previous burden estimates.

The information collected is necessary to require owners of marine VHF radios with Digital Selective Calling (DSC) capability to register information such as the name, address, type of vessel with a private entity issuing marine mobile service identities (MMSI). The information would be used by search and rescue personnel to identify vessels in distress and to select the proper rescue units and search methods. The requirement to collect this information is not contained in a Commission rule or formal FCC order, but in agreements with the U.S. Coast Guard and private sector entities that issue MMSI's.

The information is used by private entities to maintain a database used to provide information about the vessel owner in distress using marine VHF radios with DSC capability. If the data were not collected, the U.S. Coast Guard would not have access to this information which would increase the time and effort needed to complete a search and rescue operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–11597 Filed 5–11–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 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: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 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 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 control number.

DATES: Persons wishing to comment on this information collection should submit comments by July 13, 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: Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0910.

Title: Section 20.18(i), Third Report and Order in CC Docket No. 94–102, To Ensure Compatibility With Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1,398 respondents; 1,398 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 1, 4(i), 201, 303, 309 and 332.

Total Annual Burden: 1,398 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirement). The Commission will submit this information collection after this 60 day comment period.

The Commission has adjusted its previous burden estimates. The total annual burden has been reduced by 2,602 hours since 2009 because of fewer respondents and responses.

The *Third Report and Order* in CC Docket No. 94–102, adopted rules applicable to wireless carriers to permit the use of network-based solutions, handset-based solutions, or hybrid solutions. The adopted rules require changes both to handsets and wireless networks in providing caller location information as part of Enhanced 911 (or E911) services. The Commission adopted the *Third Report and Order* to encourage the deployment of the best location technology for each area being served, promote competition in E911 location technology, and speed implementation of E911.

As part of the rules, the Third Report and Order also adopted a requirement that wireless carriers report their plans for implementing Phase II E911 service to the Commission. Specifically, this report must include the technology they plan to use to provide caller location as well as information to enable public safety organizations, equipment manufacturers, local exchange carriers, and the Commission to plan and support Phase II deployment. The Commission required wireless carriers to file these initial reports in 2000. Carriers are required to update these plans within thirty days of the adoption of any change. The reporting requirements are discussed in detail in 47 CFR 20.18(i).

OMB Control No.: 3060–1004.

Title: Section 20.18(g)(1), Commission Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 178 respondents; 508 responses.

Estimated Time per Response: 1 hour to 4 hours.

Frequency of Response: Quarterly, semi-annual and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 1, 4(i), 201, 303, 309 and 332.

Total Annual Burden: 1,982 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirement). The Commission will submit this information collection after this 60 day comment period. The Commission is reporting an adjustment of 780 total annual hours which is due to industry consolidation. The number of Tier 1 carriers has gone from 22 to 4, and Tier II carriers are estimated from 12 to 3. The number of Tier III carriers has expanded from 50 to 110. These changes in the marketplace caused the Commission to adjust the estimates which also accounts for the change in hourly burden.

Distinct from the Commission's rules and precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act). The ENHANCE 911 Act, *inter alia,* directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of 47 CFR 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if ''strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.''

The Commission originally established reporting requirements in an order released in October 2001 which received OMB approval. Nationwide wireless carriers (''Tier 1'') generally must file quarterly reports with the Commission on February 1, May 1, August 1 and November 1 of each year, with the exception of T-Mobile, which is required to file semi-annual reports (as of October 2002). Mid-sized carriers (''Tier II'') also were required to file quarterly reports under this same time schedule.

In a July 2003 revision approved by OMB, the Commission decided that the information requirements in the quarterly reports, beginning with the August 1, 2003 filing, be submitted with an Excel spreadsheet as an appendix to Tier I and Tier II carrier narrative reports. The existing information collection only required Tier III carriers to file a one-time interim report. Tier III wireless carriers were also not required to submit an Excel spreadsheet with their one-time filings.

This reporting requirement was further revised in 2005 because on October 21, 2005, the Commission adopted an order finding that certain Tier III carriers did not sufficiently support their requests for waiver of the E911 rules, but providing the carriers with additional time, until July 2006, to augment the record to show a clear path to full compliance with the E911 requirements. The Commission also imposed conditions and required the Tier III carriers to file separate status reports by November 21, 2005, and commencing February 1, 2006, additional status reports on a quarterly basis for a two-year period.

The Commission will use the information submitted by Tier III carriers subject to reporting requirements to ensure that they comply with the Commission's E911 requirements and the terms of the underlying orders addressing requests for waiver relief by all Tiers.

OMB Control No.: 3060–0790.

Title: Section 68.110(c), Availability of Inside Wiring Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200 respondents; 1,200 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154, 201–205, 218, 220 and 405 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,200 hours.

Annual Cost Burden: $5,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission is not requesting that respondents submit any confidential trade secrets or proprietary information to the FCC.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the recordkeeping and/or third party disclosure requirements). The Commission will submit this information collection after this 60 day comment period to the OMB.

Section 68.110(c) requires that any available technical information concerning carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records, shall be provided by the telephone company upon request of the building owner or agent thereof. The provider of wireline telecommunications services may charge the building owner a reasonable fee for this service, which shall not exceed the cost involved in locating and copying the documents. In the alternative, the provider may make these documents available for review and copying by the building owner or his agent. In this case, the wireline telecommunications carrier may charge a reasonable fee, which shall not exceed the cost involved in making the documents available, and may also require the building owner or his agent to pay a deposit to guarantee the documents' return.

The information is needed so that building owners may choose to contract with an installer of their choice on inside wiring maintenance and installation services to modify existing wiring or assist with the installation of additional inside wiring.

OMB Control No.: 3060–0791.

Title: Section 32.7300, Accounting for Judgments and Other Costs Associated with Litigation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2 respondents; 2 responses.

Estimated Time per Response: 4 to 36 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154, 161, 201–205 and 218–220 of the Communications Act of 1934, as amended.

Total Annual Burden: 40 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. The Commission is not requesting that respondents submit confidential information to the FCC.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the recordkeeping and/or

reporting requirements). The Commission will submit this information collection after this 60 day comment period to the OMB.

The Commission adopted accounting rules that require carriers to account for adverse federal antitrust judgments and post-judgment special charges. With regard to settlements of such lawsuits there will be a presumption that carriers can recover the portion of the settlement that represents the avoidable costs of litigation; provided that the carrier makes a required showing. To receive recognition of its avoided cost of litigation a carrier must demonstrate, in a request for special relief, the avoided costs of litigation by showing the amount corresponding to the additional litigation expenses discounted to present value, that the carrier reasonably estimates it would have paid if it had not settled. Settlement costs in excess of the avoided costs of litigation are presumed not recoverable unless a carrier rebuts that presumption by showing the basic factors that enticed the carrier to settle and demonstrating that ratepayers benefited from the settlement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–11596 Filed 5–11–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before June 13, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0761.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or households; and not-for-profit entities.

Number of Respondents and Responses: 12,609 respondents; 78,633 responses.

Estimated Time per Response: 15 minutes (0.25 hours) to 10 hours.

Frequency of Response: Annual and on occasion reporting requirements; third party disclosure requirement; recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Total Annual Burden: 198,049 hours.

Total Annual Cost: $35,505,816.00.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, be closed captioned. The existing collections include petitions by video programming owners, producers and distributors for exemptions from the closed captioning rules, responses by viewers, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors, and recordkeeping in support of complaint responses; and making video programming distributor contact information available to viewers

in phone directories, on the Commission's Web site and the Web sites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them).

In addition, the Commission seeks to extend proposed information collection requirements. Specifically, on July 21, 2005, the Commission released Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking, CG Docket No. 05–231, Notice of Proposed Rulemaking, FCC 05–142, published at 70 FR 56150 on September 26, 2005 (Closed Captioning Notice of Proposed Rulemaking), which sought comment on several issues pertaining to these closed captioning rules (47 CFR 79.1). The Closed Captioning Notice of Proposed Rulemaking sought comment, inter alia, on whether petitions for exemption from the closed captioning rules should be permitted (or required) to be filed electronically through the Commission's Electronic Comment Filing System, and whether video programming distributors should be required to submit compliance reports to the Commission in cases where the final required amount of captioning post phase-in (e.g., pre-rule programming) is not 100 percent. These proposed information collection requirements remain pending.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–11595 Filed 5–11–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) will hold its fourth meeting. Several working groups will present their best practice recommendations on emergency alerting systems such as promoting E9–1–1 reliability and alerting platforms—Emergency Alert System and Common Alerting Protocol.

DATES: June 6, 2012.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on June 6, 2012, from 9:00 a.m. to 1:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554. The CSRIC.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure the security, reliability, and interoperability of communications systems. On March 19, 2011, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2013. Working Groups are described in more detail at *http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii.*

The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–11505 Filed 5–11–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

May 9, 2012.

TIME AND DATE: 10:00 a.m., Thursday, May 17, 2012.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *The American Coal Co.,* Docket Nos. LAKE 2007–139, *et al.* (Issues include whether certain safeguard notices are defective because they fail to identify specific hazards and specify what the operator must do to comply with them.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–11696 Filed 5–10–12; 4:15 pm]

BILLING CODE 6735–01–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 June 7, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Tompkins Financial Corporation,* Ithaca, New York; through its subsidiary TMP Mergeco Inc., Ithaca, New York; to merge with VIST Financial Corp., and thereby acquire VIST Bank, both in Wyomissing, Pennsylvania.

In connection with this proposal, TMP Mergeco Inc., Ithaca, New York, has applied to become a bank holding company by acquiring 100 percent of the voting shares of VIST Financial Corp., and its subsidiary VIST Bank, both in Wyomissing, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Community Bancshares of Mississippi, Inc. Employee Stock Ownership Plan and Community Bancshares of Mississippi, Inc.,* both in Brandon, Mississippi; to acquire 100 percent of the voting shares of Community Holding Company of Florida, Inc., Miramar Beach, Florida, and thereby indirectly acquire Community Bank, Destin, Florida.

C. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Northwest Investment Corp.,* Davenport, Iowa; to become a bank holding company following the conversion of its subsidiary, Northwest Bank & Trust Company, Davenport, Iowa, from a federally chartered savings bank to a state chartered bank.

Board of Governors of the Federal Reserve System, May 8, 2012.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 2012–11481 Filed 5–11–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 102 3058]

Myspace, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 8, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Myspace, File No. 102 3058'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/myspaceconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine Race Brin (202–326–2106) or Amanda Koulousias (202–326–3334), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 8, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 8, 2012. Write ''Myspace, File No. 102 3058'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request,

confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/myspaceconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Myspace, File No. 102 3058'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 8, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Myspace LLC (''Myspace'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Myspace operates a social networking Web site, *www.myspace.com,* that, among other features, enables a consumer who uses the site to create and customize a personal online profile. These profiles contain content about users, such as their name, the names of other users who are their ''friends'' on the site, photos and videos they upload, messages and comments they post or receive from their friends, and other personal information. Myspace assigns a persistent unique numerical identifier, called a ''Friend ID,'' to each user profile created on Myspace. The Friend ID is a component of the URL for each user's profile page. For example, inserting *www.myspace.com/12345678* into the address bar of a web browser will bring up the Myspace profile page of the user who is assigned Friend ID 12345678. The Friend ID can be used to access information about the user, including the user's profile picture, location, gender, age, display name (*e.g.,* a nickname or pseudonym displayed on the user's profile), and, in many cases, the user's full name.

Myspace obtains revenue by allowing third-party or affiliate advertising networks to serve advertisements directly on its site. The FTC complaint alleges that Myspace made numerous promises to its users regarding the extent to which it shared consumers' personal information with third-party advertisers. The complaint alleges that Myspace promised that: (1) It would not use or share a user's personally identifiable information, defined as full name, email address, mailing address, telephone number, or credit card number, without first giving notice to and receiving permission from users; (2) the means through which it customized ads did not allow advertisers to access personally identifiable information or individually identify users; (3) the information shared with advertisers regarding web browsing activity was anonymized; and (4) it complied with the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Myspace violated Section 5(a) of the FTC Act, by misleading users about what information third-party advertisers received about them. According to the FTC complaint, from January 2009 through June 2010, and again from October 29, 2010 through October 28, 2011, when Myspace displayed advertisements on its Web site from certain unaffiliated third-party advertisers, Myspace and/or its affiliate provided those advertisers with the Friend ID of the user who was viewing the page. With this information, a third-party advertiser could take simple steps to get detailed information about individual users. For example, a third-party advertiser could use the Friend ID to visit the user's personal profile on the Myspace Web site to obtain personal information, including, for most users, their full name. A third-party advertiser could also combine the user's real name and other personal information with additional information contained in the advertiser's tracking cookie, a small text file placed on a user's browser that may include information about the user's online browsing history.

The proposed order contains provisions designed to prevent Myspace from engaging in future practices similar to those alleged in the complaint.

Part I of the proposed order prohibits Myspace from misrepresenting the privacy and confidentiality of any ''covered information,'' as well as the company,s compliance with any privacy, security, or other compliance program, including but not limited to the U.S.-EU Safe Harbor Framework. ''Covered information'' is defined broadly to include an individual's: (a) First and last name; (b) home or other physical address, including street name and city or town; (c) email address or other online contact information, such as an instant messaging user identifier or screen name; (d) mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (''IP'') address, User ID, device ID, or other persistent identifier; (g) list of contacts; or (h) physical location.

Part II of the proposed order requires Myspace to establish and maintain a comprehensive privacy program that is reasonably designed to: (1) Address privacy risks related to the development and management of new and existing products and services, and (2) protect the privacy and confidentiality of covered information. The privacy program must be documented in writing and must contain privacy controls and procedures appropriate to Myspace's size and complexity, the nature and scope of its activities, and the sensitivity of covered information. Specifically, the order requires Myspace to:

- Designate an employee or employees to coordinate and be responsible for the privacy program;
- Identify reasonably-foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of covered information and assess the sufficiency of any safeguards in place to control these risks;
- Design and implement reasonable privacy controls and procedures to control the risks identified through the privacy risk assessment and regularly test or monitor the effectiveness of the safeguards' key controls and procedures;

and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

• Develop and use reasonable steps to select and retain service providers capable of appropriately protecting the privacy of covered information they receive from respondent, and require service providers by contract to implement and maintain appropriate privacy protections; and

• Evaluate and adjust its privacy program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its privacy program.

Part III of the proposed order requires that Myspace obtain within 180 days, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: It has in place a privacy program that provides protections that meet or exceed the protections required by Part II of the proposed order; and its privacy controls are operating with sufficient effectiveness to provide reasonable assurance that the privacy of covered information is protected.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires that Myspace retain for a period of five (5) years: (a) All ''widely disseminated statements'' that describe the extent to which respondent maintains and protects the privacy and confidentiality of any covered information, along with all materials relied upon in making or disseminating such statements; (b) all consumer complaints directed at Myspace, or forwarded to Myspace by a third party, that allege unauthorized collection, use, or disclosure of covered information and any responses to such complaints; (c) all subpoenas and other communications with law enforcement entities or personnel that relate to its compliance with the proposed order; (d) documents that contradict, qualify, or call into question its compliance with the proposed order. Part IV additionally requires that Myspace retain all materials relied upon to prepare the third-party assessments for a period of five (5) years after the date that each assessment is prepared.

Part V requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that Myspace submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission, Commisioner Ohlhausen not participating.

Donald S. Clark,

Secretary.

[FR Doc. 2012–11613 Filed 5–11–12; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007; Docket 2011–0016; Sequence 12]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Form 527, Contractor's Qualifications and Financial Information

AGENCY: Office of the Chief Finance Officer, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding GSA Form 527, Contractor's Qualifications and Financial Information. A notice was published in the **Federal Register** at 77 FR 5020, on February 1, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 13, 2012.

FOR FURTHER INFORMATION CONTACT: Erik Dorman, Office of Financial Policy and Operations, at (202) 501–4568 or via email at *lynn.dorman@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0007, Contractor's Qualifications and Financial Information, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0007, Contractor's Qualifications and Financial Information.

Instructions: Please submit comments only and cite Information Collection 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget to extend information collection 3090–0007, concerning GSA Form 527, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation (FAR) 9.103(a)and 9.104–1 and also the General Services Administration Acquisition Manual (GSAM) 509.105–1.

B. Annual Reporting Burden

Respondents: 2,940.
Responses per Respondent: 1.2.
Total Responses: 3,528.
Hours per Response: 2.5.
Total Burden Hours: 8,820.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please

cite OMB Control No. 3090–0007, GSA Form 527, Contractor's Qualifications and Financial Information, in all correspondence.

Dated: May 2, 2012.

Casey Coleman,

Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 2012–11604 Filed 5–11–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Ocular Imaging Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

Award Approving Official: Farzad Mostashari, National Coordinator for Health Information Technology.

Authority: 15 U.S.C. 3719.

SUMMARY: The ''Ocular Imaging Challenge'' is a multidisciplinary call to innovators and software developers to create an application that improves interoperability among office-based ophthalmic imaging devices, measurement devices, and EHRs.

Documentation of the typical ophthalmology examination in an electronic health record (EHR) continues to be challenging. This creates barriers to full acceptance and use of EHRs within the medical community. Data and images are often stored on the acquisition devices in proprietary databases and file formats, and therefore have limited connectivity with EHR systems and ophthalmology-specific picture archiving and communication systems (PACS). There are often problems with redundant entry of demographic and clinical data into devices, data transfer from devices to EHRs and PACS without proprietary interfaces, workflow challenges, and difficulty connecting systems from different vendors. These same challenges occur in a plurality of other medical specialties that employ office-based testing and measurement. Given this fact, there is every expectation that the success of this challenge will be translatable to practices that use imaging and measurement devices such as otorhinolaryngology (ear, nose, and throat), physiatry (physical medicine and rehabilitation), and cardiology, among others.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES: Effective on May 14, 2012. Challenge submission period ends November 9, 2012, 11:59 p.m. et.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866; Wil Yu, 202–690–5920

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The ''Ocular Imaging Challenge'' is a multidisciplinary call to innovators and software developers to create an application that improves interoperability among office-based ophthalmic imaging devices, measurement devices, and EHRs. This application should:

- Convert output from legacy ophthalmic imaging and measurement devices from proprietary formats to vendor-neutral standard formats (e.g. using freeware DICOM tools)
- Archive data from multiple imaging and measurement devices
- Display images and data for clinicians, and permit basic functionalities such as optimizing viewing parameters (e.g. brightness, contrast, color, zoom, pan)
- Integrate with existing EHRs (e.g. ''single sign-on'')
- Where applicable, leverage and extend NwHIN standards and services including, but not limited to, transport (Direct, web services), content (Transitions of Care, CCD/CCR), and standardized vocabularies

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Registration Process for Participants

To register for this challenge participants should:

- Access the *www.challenge.gov* Web site and search for the ''Ocular Imaging Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2con.com/devchallenge/challenges/onc-i2-challenges/.*
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize

- First Prize: $100,000
- Second Prize: $35,000
- Third Prize: $15,000

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The ONC review panel will make selections based upon the following criteria:

- Breadth of input devices and formats

○ The solution will accept output from a wide range of ophthalmic devices and input formats, and convert to standard DICOM formats (e.g. using freeware tools).

▪ Usability and interface for image viewing

○ The solution will have an easy-to-use interface for clinicians with a range of experience and comfort level with technology.

○ The solution will provide the ability to view and annotate diagnostic-quality ophthalmic images.

▪ Integration with workflow

○ The solution will be convenient to integrate into clinical ophthalmology workflow, to install on existing office hardware platforms, and to integrate with existing EHR systems (e.g. ''single sign-on'').

▪ Platform Neutrality

Additional Information

Ownership of intellectual property is determined by the following:

▪ Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.

▪ By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Dated: May 7, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–11591 Filed 5–11–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Alcohol-related Motor Vehicle Injury Research, FOA CE12–006, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

TIME AND DATE: 12 p.m.–2:30 p.m., June 12, 2012 (Closed).

PLACE: Teleconference.

STATUS: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

MATTERS TO BE DISCUSSED: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Alcohol-related Motor Vehicle Injury Research, FOA CE12–006, initial review.''

CONTACT PERSON FOR MORE INFORMATION: Jane Suen, Dr.P.H., M.S., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4281.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 8, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–11546 Filed 5–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

TIMES AND DATES: 9:00 a.m.–5:00 p.m., June 14, 2012.

9:00 a.m.–12:00 p.m., June 15, 2012.

PLACE: CDC, Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia, 30333

STATUS: Open to the public, limited only by the space available. Please register for the meeting at *www.cdc.gov/hicpac.*

PURPOSE: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health and Human Services, the Director, CDC, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), and the Director, Division of Healthcare Quality Promotion regarding 1) the practice of healthcare infection control; 2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and 3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections (HAIs) and healthcare-related conditions.

MATTERS TO BE DISCUSSED: The agenda will include updates on CDC's activities for HAIs including outbreaks and guidance on the use of single-dose vials; draft guideline for prevention of infections among patients in neonatal intensive care units (NICU); draft guideline for management of occupational exposures to HIV and recommendations for post-exposure prophylaxis; draft guidance for facility adjudication of infection data; and an update on National HealthCare Safety Network (NHSN) validation and surveillance definitions for central-line associated bloodstream infections and surgical site infections. Time will be available for public comment.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, l600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia, 30333, Telephone (404) 639–4045, Email: *hicpac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–11547 Filed 5–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Research to Prevent Prescription Drug Overdoses, FOA CE12–007, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12:00 p.m.–4:00 p.m., June 14, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Research to Prevent Prescription Drug Overdoses, FOA CE12–007, initial review.''

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4281.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–11551 Filed 5–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Research and Technical Assistance for Public Health Interventions in Haiti to Support Post Earthquake Reconstruction, Cholera and HIV/AIDS Response, FOA GH12–001, and Research and Technical Assistance for Public Health Laboratories in Haiti to Support Post Earthquake Reconstruction, Cholera and HIV/AIDS Response, FOA GH12–002, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 10:00 a.m.–12:00 p.m., June 26, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Research and Technical Assistance for Public Health Interventions in Haiti to Support Post Earthquake Reconstruction, Cholera and HIV/AIDS Response, FOA GH12–001,'' and ''Research and Technical Assistance for Public Health Laboratories in Haiti to Support Post Earthquake Reconstruction, Cholera and HIV/AIDS Response, FOA GH12–002, initial review.''

Contact Person for More Information: Hylan D. Shoob, Ph.D., M.S.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, Georgia 30333, Telephone: (404) 639–4796.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 4, 2012.

Cathy Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–11550 Filed 5–11–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Cross-Site Evaluation of the Infant Adoption Awareness Training Program for Projects Initially Funded in Fiscal Year 2006.

OMB No.: 0970–0371.

Background and Brief Description: The Administration for Children and Families' (ACF) Children's Bureau (CB), is requesting extension of the OMB-approved data collection instruments used in the Cross-Site Evaluation of the Infant Adoption Awareness Training Program (IAATP). The instruments that require extension include the IAATP Trainee Pretest Survey and the IAATP Trainee Follow-up Survey.

Title XII, Subtitle A, of the Children's Health Act of 2000 (CHA) authorizes the Department of Health and Human Services to make Infant Adoption Awareness Training grants available to national, regional, and local adoption organizations for the purposes of developing and implementing programs that train the staff of public and non-profit private health service organizations to provide adoption information and referrals to pregnant women on an equal basis with all other courses of action included in non-directive counseling of pregnant women. Section 1201(a)(2)(A) of the IAATP legislation requires grantees to develop and deliver trainings that are consistent with the Best Practice Guidelines for Infant Adoption Awareness Training. The IAATP guidelines address training goals, basic skills, curriculum and training structure. A complete description of the guidelines is available at *http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/iaatp.htm*.

The funded adoption organizations agree to make every effort to ensure that the recipients of the training are the staff of ''eligible health centers'' as specified in the grant. As defined in the legislation, these entities include: (a) Eligible health centers that receive grants under authority contained in Title X of the Public Health Service Act (relating to voluntary family planning projects); (b) eligible health centers that receive grants under Section 330 of the Public Health Service Act (relating to community health centers, migrant health centers, and centers regarding homeless individuals and residents of public housing); and (c) eligible health centers that receive grants under the Children's Health Act of 2000 for the provision of services in schools (subsection (a)(5), 42 U.S.C. 254c–6(a)(5)(C)).

A total of six organizations were awarded IAATP funding in FY2006. In 2011, each of these organizations was awarded a new grant for a brief (17 month) project period. The purpose of the new project period, which commenced October 1, 2011, is for the grantees to enhance, adopt, or adapt their existing IAATP curriculum; implement the modified training; and evaluate the outcomes of participants in

the training. Specifically, the new cooperative agreements require the grantees to emphasize and strengthen four training areas that preliminary cross-site evaluation findings indicate require improvement: (1) Adoption law, (2) non-directive counseling, (3) adolescent development and the impact on adoption decision making, and (4) adoption types and practices. The cooperative agreements also require the grantees to increase and maximize penetration of the training within the target population of eligible health care centers.

As in the previous grant period, each grantee is required to participate in the national cross-site evaluation of the extent to which the IAATP training objectives are met. The Infant Adoption Awareness Training Program Trainee Survey is the primary outcome data collection instrument for the national cross-site evaluation. Respondents complete the survey prior to receiving the training and approximately 90 days after the training, which provides an assessment of the extent to which trainees demonstrate sustained gains in their knowledge about adoption, and the impact of the training on their subsequent work with pregnant women. Extension of the pretest and follow-up data collection instruments beyond the December 31, 2012 expiration date is necessary in order to complete a cross-site evaluation of the extent to which the IAATP grantees fulfill the key objectives of the new grant period (as stated above). The data collection instruments will also continue to be utilized to determine whether the grantees achieve the core objectives of the IAATP, which include enhancing adoption knowledge within the target population; providing adoption information on an equal basis with all other options; and increasing awareness of community resources for adoption.

Pretest and follow-up versions of the survey require approximately 15 and 10 minutes, respectively, to complete. The estimated response time for the follow-up survey includes time for respondents to access the Web-based survey and complete the survey online. Respondents will not need to implement a recordkeeping system or compile source data in order to complete the survey. Where possible, fields in the follow-up version of the survey are pre-filled with static data from the respondent's pretest (e.g., demographics, agency type) in order to further expedite completion of the survey and minimize respondent burden.

Respondents: Infant Adoption Awareness Program Trainees.

ANNUAL BURDEN ESTIMATES

Number of instrument	Average burden	Number of respondents	Responses per respondent	Hours per response
IAATP: Trainee Survey Pretest Administration	870	1	0.25	217.5
IAATP: Trainee Survey Follow-Up Administration	870	1	0.17	147.9

Estimated Total Annual Burden Hours: 365.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–11526 Filed 5–11–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the following National Advisory body scheduled to meet during the month of June 2012.

The National Advisory Committee on Rural Health will convene its seventy-

first meeting in the time and place specified below:

Name: National Advisory Committee on Rural Health and Human Services.

Dates And Times:
June 18, 2012, 9:00 a.m.–5 p.m.
June 19, 2012, 9:00 a.m.–5 p.m.
June 20, 2012, 8:45 a.m.–11:15 a.m.

Place: Kansas City Marriott Downtown, 200 West 12th Street, Kansas City, MO 64105, (816) 421–6800.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides counsel and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

Agenda: At 9:00 a.m. on June 18, the meeting will be called to order by the Honorable Ronnie Musgrove, Chairman of the Committee. The Committee will be examining potential long term impacts on the rural healthcare infrastructure and the intersection of the Child Care and Development Fund and the Head Start program. The day will conclude with a period of public comment at approximately 4:30 p.m.

At approximately 9:00 a.m. on June 19, the Committee will break into Subcommittees and depart for site visits to rural healthcare and human service providers in Kansas and Missouri. One panel from the Health Infrastructure Subcommittee will visit the Hiawatha Community Hospital in Hiawatha, KS. Another panel from the Health Infrastructure Subcommittee will visit Carroll County Memorial Hospital in Carrollton, MO. The Human Services panel will visit a Head Start program in Marshall, MO. The day will conclude at the Kansas City Marriott Downtown with a period of public comment at approximately 4:30 p.m.

At 9:00 a.m. on June 20, the Committee will summarize key findings from the meeting and develop a work plan for the next quarter and the following meeting.

For Further Information Contact: Steve Hirsch, MSLS, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 5A–05, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Aaron Wingad at the Office of Rural Health Policy (ORHP) via telephone at (301) 443–0835 or by email at *awingad@hrsa.gov*. The Committee meeting agenda will be posted on ORHP's Web site *http://www.hrsa.gov/advisorycommittees/rural/*.

Dated: May 8, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–11598 Filed 5–11–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Hazardous Waste Worker Training

AGENCY: National Institute of Environmental Health Sciences, Division of Extramural Research and Training, NIH, HHS.

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Hazardous Waste Worker Training—42 CFR part 65. *Type of Information Collection Request:* Extension of OMB No. 0925–0348 and expiration date September 30, 2012. *Need and Use of Information Collection:* This request for OMB review and approval of the information collection is required by regulation 42 CFR part 65(a)(6). The National Institute of Environmental Health Sciences (NIEHS) was given major responsibility for initiating a worker safety and health training program under Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) for hazardous waste workers and emergency responders. A network of non-profit organizations that are committed to protecting workers and their communities by delivering high-quality, peer-reviewed safety and health curricula to target populations of hazardous waste workers and emergency responders has been developed. In twenty-four years (FY 1987–2011), the NIEHS Worker Training program has successfully supported 20 primary grantees that have trained more than 2.7 million workers across the country and presented over 160,913 classroom and hands-on training courses, which have accounted for nearly 36 million contact hours of actual training. Generally, the grant will initially be for one year, and subsequent continuation awards are also for one year at a time. Grantees must submit a separate application to have the support continued for each subsequent year. Grantees are to provide information in accordance with S65.4(a), (b), (c) and 65.6(a) on the nature, duration, and purpose of the training, selection criteria for trainees' qualifications and competency of the project director and staff, cooperative agreements in the case of joint applications, the adequacy of training plans and resources, including budget and curriculum, and response to meeting training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulations (29 CFR 1910.120). As a cooperative agreement, there are additional requirements for the progress report section of the application. Grantees are to provide their information in hard copy as well as enter information into the WETP Grantee Data Management System. The information collected is used by the Director through officers, employees, experts, and consultants to evaluate applications based on technical merit to determine whether to make awards. *Frequency of Response:* Biannual. *Affected Public:* Non-profit organizations. *Type of Respondents:* Grantees. The annual reporting burden is as follows*: Estimated Number of Respondents:* 20; *Estimated Number of Responses per Respondent:* 2; *Average Burden Hours per Response:* 14; and *Estimated Total Annual Burden Hours Requested:* 560. The annualized cost to respondents is estimated at: $18,200. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Joseph T. Hughes, Jr., Director, Worker Education and Training Branch, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or call non-toll-free number (919)

541–0217 or Email your request, including your address to *wetp@niehs.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 27, 2012.

Joellen M. Austin,

Associate Director for Management.

[FR Doc. 2012–11606 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Training in Behavioral Research in Type 1 Diabetes.

Date: June 11, 2012.

Time: 9:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Improving Adherence in Type 1 Diabetes.

Date: June 13, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11608 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Science Education Awards (R25).

Date: June 5, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Uday K. Shankar, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3193, *uday.shankar@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11611 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Pane,l Clinical Research of Complementary Medical Care.

Date: June 5, 2012.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Two Democracy Plaza 6707 Democracy Boulevard Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hungyi Shau, Ph.D., Scientific Review Officer, National Center for Complementary, and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11614 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, P30 Rheumatic Diseases Core Center Review.

Date: June 13–14, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892–4872, 301–451–4838, *mak2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11615 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Craniofacial Development and Skeletal Genetics.

Date: May 31, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Craig Giroux, Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204, *girouxcn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Genetics and Epidemiology: Collaborative Applications.

Date: June 4, 2012.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: George Vogler, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, Bethesda, MD 20892, 301–435–0694, *voglergp@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: June 5–6, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: June 6–7, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Molecular Neurogenetics Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA–RM–11–007: NIH Director's Early Independence Award Review.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Weijia Ni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: June 7–8, 2012.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Santa Monica, CA, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–216: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.

Date: June 7, 2012.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Miami, 400 SE 2nd Avenue, Miami, FL 33131.

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental Biomechanics and Implants.

Date: June 7, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–218: Innovations in Biomedical Computational Science and Technology.

Date: June 7, 2012.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Yvonne Bennett, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: June 8, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street NW., Washington, DC 20007.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AREA (R15) Applications in Biobehavioral Regulation, Learning and Ethology.

Date: June 8, 2012.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Biomedical Computing and Health Informatics Study Section.

Date: June 8, 2012.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–12–010: NIH Competitive Revision Applications for Research Relevant to the Family Smoking Prevention and Tobacco Control Act (R01) Review Meeting.

Date: June 8, 2012.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR12–010 and PAR12–011: Competitive Revision Applications for Research Relevant to the Family Smoking Prevention and Tobacco Control Act.

Date: June 8, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11612 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases B Subcommittee.

Date: June 7, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Salon G, Arlington, VA 22202.

Contact Person: Nancy Lewis Ernst, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11610 Filed 5–11–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0008; OMB No. 1660–0069]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Fire Incident Reporting System (NFRS) v5.0

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before June 13, 2012.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Fire Incident Reporting System (NFIRS) v5.0.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: OMB No. 1660–0069.

Form Titles and Numbers: The National Fire Incident Reporting System (NFIRS) v5.0.

Abstract: NFIRS provides a mechanism using standardized reporting methods to collect and analyze fire incident data at the Federal, State, and local levels. Data analysis helps local fire departments and States to focus on current problems, predict future problems in their communities, and measure whether their programs are working.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 23,890.

Estimated Number of Responses: 29,970,120.

Estimated Total Annual Burden Hours: 13,704,900 hours.

Estimated Cost: The estimated annual operations and maintenance costs to respondents or recordkeepers resulting from the collection of information is $13,775,850. The estimated annual cost to the Federal Government is $2,794,252.

Dated: April 30, 2012.

John J. Jenkins, Jr,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–11527 Filed 5–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4061–DR; Docket ID FEMA–2012–0002]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–4061–DR), dated March 22, 2012, and related determinations.

DATES: *Effective Date:* April 20, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 22, 2012.

Lincoln and Mingo Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–11529 Filed 5–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4058–DR; Docket ID FEMA–2012–0002]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Indiana (FEMA–4058–DR), dated March 9, 2012, and related determinations.

DATES: *Effective Date:* April 10, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Gregory W. Eaton as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–11528 Filed 5–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4062–DR; Docket ID FEMA–2012–0002]

Hawaii; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Hawaii (FEMA–4062–DR), dated April 18, 2012, and related determinations.

DATES: *Effective Date:* May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Hawaii is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 18, 2012.

Maui County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–11530 Filed 5–11–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5609–N–04]

Notice of Proposed Information Collection for Public Comment on the Study of Public Housing Agencies' Engagement With Homeless Households—Follow-up Sample Survey

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 13, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Anne Fletcher at (202) 402–4347 (this is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Fletcher.

SUPPLEMENTARY INFORMATION: The Department will submit 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 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 that will reduce burden, (*e.g.,* permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Study of Public Housing Agencies' Engagement with Homeless Households—Follow-up Sample Survey.

OMB Control Number: XXXX-pending.

Description of the need for the information and proposed use: This information collection will support research that will explore and document how public housing agencies (PHAs) currently serve and interact with homeless households, to achieve the following: (1) Establish a baseline level of PHAs' current engagement in serving homeless households, (2) document the practices of PHAs that have an explicit preference for homeless households; (3) explore PHA perceptions of barriers to, or concerns about, increasing the number of homeless households served or targeting homeless households for priority housing assistance; and (4) identify mechanisms to address or eliminate barriers to serving homeless households in mainstream housing assistance, with a focus on the housing choice voucher (HCV) program and public housing. Findings of this study will enable the U.S. Department of Housing and Urban Development (HUD), which funds PHAs, to develop strategies to expand access to mainstream housing opportunities for

homeless households that are rooted in evidence and informed by the PHAs themselves. This proposed data collection consists of a telephone survey to be administered to a purposeful sample of 125 public housing agencies.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

ESTIMATED RESPONDENT BURDEN HOURS AND COSTS

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
Telephone Survey	A purposeful sample of public housing agencies.	125	60	1	125
Total Burden Hours					125

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: May 2, 2012.

Erika C. Poethig,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 2012–11514 Filed 5–11–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID No. BSEE–2012–0008; OMB Control Number 1014–0009]

Information Collection Activities: Legacy Data Verification Process (LDVP); Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in a Notice to Lessees and Operators (NTL) discussed below.

DATES: You must submit comments by July 13, 2012.

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

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled, Enter Keyword or ID, enter BSEE–2012–0008 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1014–0009 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations Development Branch at (703) 787–1607 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: Legacy Data Verification Process (LDVP)—NTL (formerly known as Historical Well Data Cleanup).

OMB Control Number: 1014–0009.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to the mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA at 43 U.S.C. 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.''

BSEE's Legacy Data Verification Process (LDVP) requests operators to supply missing data or corrected data for wells drilled prior to January 2000 that do not have an assigned API number. This notice announces our intention to request a 3-year extension for this information collection.

The information we collect under this NTL, is missing data for wellbores that BSEE has not assigned API numbers and other well data discovered as missing while completing the well database cleanup. We are not able to manage and utilize data from drilling operations accurately without the information for the missing wells. We will use the information to identify other well data (e.g., logs, surveys, tests) missing from our records, geologically map existing BSEE data to the correct wellbore/location, and correctly exchange information with the operators and industry. Our geoscientists can use the information to evaluate resources for lease sales for fair market value. With respect to safety concerns, we believe that there may be anywhere from 1,500 to 4,500 unidentified completed and abandoned wellbores (bypasses and sidetracks), some of which may contain stuck drill pipe or other materials. In approving permits and other operations in an area, it is important for us to know what may be adjacent to or near the vicinity of the activity we are approving to minimize the risk of blowouts, loss of well control, and endangerment to life, health, and the environment. This is particularly important as, over the years, the number of wells drilled constantly

increases, thereby increasing the risk to adjacent activities if operators are not aware of what might be in the area.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR part 2), and 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 11,250 hours for approximately 4,500 wells, based on:

(1) 0.5 hours to locate and copy a summary of drilling operations (e.g., scout tickets) for each well; and

(2) 2 hours to retrieve and analyze each well file and retrieve other missing data. There are no recordkeeping requirements.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 4, 2012.

Douglas W. Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–11631 Filed 5–11–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2012–N087; FXES11130200000F5–123–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before June 13, 2012.

ADDRESSES: Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87107 at (505) 248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6651.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–67487A

Applicant: Rogelio M. Rodriguez, Denver, Colorado.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) and Mexican long-nosed bat (*Leptonycteris nivalis*) within Arizona and New Mexico.

Permit TE–67491A

Applicant: Permits West, Inc., Edgewood, New Mexico.

Applicant requests a new permit for research and recovery purposes to

conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona, New Mexico, and Utah.

Permit TE–67494A

Applicant: Melanie Snyder, Lockhart, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapilla*), golden-cheeked warbler (*Dendroica chrysoparia*), and Houston toad (*Bufo houstonensis*) within Texas.

Permit TE–70795A

Applicant: Bowers Environmental Consulting, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absences surveys of the following wildlife species, and leaf and flower collection of the following plant species across their ranges, as appropriate, within Arizona, New Mexico, and Texas:

- Arizona hedgehog cactus (*Echinocereus triglochidiatus* var. *arizonicus*)
- Black-footed ferret (*Mustela nigripes*)
- Gila topminnow (*Poeciliopsis occidentalis*)
- Huachuca water umbel (*Lilaeopsis schaffneriana* spp. *recurva*)
- Kearney's blue star (*Amsonia kearneyana*)
- Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)
- Loach minnow (*Tiaroga cobitis*)
- Nichol's Turk's head cactus (*Echinocactus horizonthalonius* var. *nicholii*)
- Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*)
- Razorback sucker (*Xyrauchen texanus*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Spikedace (*Meda fulgida*)
- Yaqui topminnow (*Poeciliopsis occidentalis sonorensis*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)

Permit TE–71473A

Applicant: Richard Sherwin, Newport News, Virginia.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) and Mexican long-nosed bat (*Leptonycteris nivalis*) within Arizona and New Mexico.

Permit TE–71618A

Applicant: Museum of Southwestern Biology University of New Mexico Herbarium, Albuquerque, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys; collect flowers, seeds, and voucher specimens; conduct genetic analysis; and conduct a pollinator study of the following endangered plants within New Mexico:

- *Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy)
- *Astragalus humillimus* (Mancos milkvetch)
- *Coryphantha sneedii* var. *sneedii* (Sneed's pincushion cactus)
- *Echinocereus fendleri* var. *kuenzleri* (Kuenzler's hedgehog cactus)
- *Hedeoma todsenii* (Todsen's pennyroyal)
- *Ipomopsis sancti-spiritus* (Holy Ghost ipomopsis)
- *Pediocactus knowltonii* (Knowlton's cactus)

Permit TE–001623

Applicant: American Southwest Ichthyological Researchers, LLC, Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct distributional investigations, population monitoring, population estimation, spawning activities documentation, movement studies, genetic studies, habitat association studies, and life history studies of Gila chub (*Gila intermedia*), loach minnow (*Tiaroga cobitis*), and spikedace (*Meda fulgida*) within New Mexico.

Permit TE–43746A

Applicant: Northern Arizona University, Flagstaff, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Nevada and Utah.

Permit TE–71870A

Applicant: Western Area Power Administration, Phoenix, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) within Arizona.

Permit TE–026711

Applicant: U.S. Department of Agriculture—Forest Service, Flagstaff, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys and monitoring for repatriation of loach minnow (*Tiaroga cobitis*) and spikedace (*Meda fulgida*) within the Coconino National Forest.

Permit TE–66055A

Applicant: SWCA Inc., Flagstaff, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys and monitoring of loach minnow (*Tiaroga cobitis*) and spikedace (*Meda fulgida*) within Arizona.

Permit TE–72065A

Applicant: Prescott National Forest, Prescott, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species within Arizona:

- Colorado pikeminnow (*Ptychocheilus lucius*)
- Desert pupfish (*Cyprinodon macularius)*
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis occidentalis*)
- Loach minnow (*Tiaroga cobitis*)
- Razorback sucker (*Xyrauchen texanus*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Spikedace (*Meda fulgida*)

Permit TE–72079A

Applicant: John Rinne, Flagstaff, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of loach minnow (*Tiaroga cobitis*) and spikedace (*Meda fulgida*) within New Mexico.

Permit TE–800611

Applicant: SWCA, Inc., San Antonio, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of Indiana bat (*Myotis sodalis*) and gray bat (*Myotis grisescens*) throughout the species' ranges, as appropriate, within Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial

determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: April 30, 2012.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2012–11553 Filed 5–11–12; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–479 and 731–TA–1183–1184 (Final)]

Galvanized Steel Wire From China and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines,[2] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of galvanized steel wire, provided for in subheadings 7217.20.30, 7217.20.45, and 7217.90.10 [3] of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized by the Government of China and sold in the United States at less than fair value (LTFV). The Commission further determines,[2] pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Mexico of galvanized steel wire, provided for in subheadings 7217.20.30, 7217.20.45, and 7217.90.10 [3] of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective March 31, 2011, following receipt of petitions filed with the Commission and Commerce by Davis Wire Corporation, Irwindale, CA; Johnstown Wire Technologies, Inc., Johnstown, PA; Mid-South Wire Company, Inc., Nashville, TN; National Standard, LLC/DW-National Standard-Niles, LLC, Niles, MI; and Oklahoma Steel & Wire Company, Inc., Madill, OK. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of galvanized steel wire from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of galvanized steel wire from China and Mexico were sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 25, 2011 (76 FR 72721). The hearing was held in Washington, DC, on March 22, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 8, 2012. The views of the Commission are contained in USITC Publication 4323 (May 2012), entitled *Galvanized Steel Wire from China and Mexico: Investigation Nos. 701–TA–479 and 731–TA–1183–1184 (Final).*

Issued: May 8, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–11556 Filed 5–11–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Williamson and Commissioner Pinkert dissenting.

[3] Galvanized steel wire may also enter under HTS statistical reporting numbers 7229.20.0015, 7229.20.0090, 7229.90.5008, 7229.90.5016, 7229.90.5031, and 7229.90.5051.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on April 17, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Richard Lewin Wife (individual), The Hague, THE NETHERLANDS; Scitegrity Limited, Sandwich, Kent, UNITED KINGDOM; Chris Barber (individual), Leeds, Yorkshire, UNITED KINGDOM; Ted Kalbfleisch (individual), Louisville, KY; Andrea Splendiani (individual), London, UNITED KINGDOM; Oracle America, Inc., Redwood Shores, CA; and Edinburgh Parallel Computing Centre (EPCC), Edinburgh, UNITED KINGDOM, have been added as parties to this venture.

Also, Novartis, Cambridge, MA; and Genome Quest, Westborough, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on January 27, 2012. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on February 16, 2012 (77 FR 9266).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–11513 Filed 5–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on April 12, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amplicon Liveline Ltd., Brighton, UNITED KINGDOM; and Guidetech, LLC, Sunnyvale, CA, have been added as parties to this venture. Also, Tracewell Systems, Westerville, OH, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on January 26, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 16, 2012 (77 FR 9265).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–11516 Filed 5–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on April 17, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CH2MHILL, Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on January 31, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2012 (77 FR 14046).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–11515 Filed 5–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1979

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''National Longitudinal Survey of Youth 1979,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Approval of the ICR would reinstate authority to conduct this survey, which the BLS temporarily discontinued March 31, 2011.

DATES: Submit comments on or before June 13, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14 to 22 when the first round of interviews began in 1979; and they will be ages 47 to 56 when the planned twenty-fifth round of interviews is conducted in 2012 and 2013. In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31, of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, self-esteem, and other topics. The longitudinal focus of the NLSY79 and associated Child and Young Adult surveys requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. One of the goals

of the DOL is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0109. For additional information, see the related notice published in the **Federal Register** on December 8, 2011.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0109. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: National Longitudinal Survey of Youth 1979.

OMB Control Number: 1220–0109.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 14,185.

Total Estimated Number of Responses: 15,505.

Total Estimated Annual Burden Hours: 13,853.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 8, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–11488 Filed 5–11–12; 8:45 a.m.]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

161st Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 161st open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on June 12–14, 2012.

The three-day meeting will take place in C5521 Room 4, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The meeting will run from 9:00 a.m. to approximately 5:00 p.m. on June 12 and 13 and from 8:30 a.m. to approximately 4:30 p.m. on June 14, with a one hour break for lunch. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA).

The Advisory Council will study the following issues: (1) Managing Disability Risks in an Environment of Individual Responsibility; (2) Current Issues Regarding Income Replacement During Retirement Years; and (3) Current Challenges and Best Practices Concerning Beneficiary Designations in Retirement and Life Insurance Plans. The schedule for testimony and discussion of these issues generally will be one issue per day in the order noted above. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site, at *www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html*. The EBSA update is scheduled for the afternoon of June 13, subject to change.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before June 5 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in text or pdf format transmitted to *good.larry@dol.gov*. It is requested that statements not be included in the body of the email. Statements deemed relevant by the Advisory Council and received on or before June 5 will be included in the record of the meeting and made available in the EBSA Public Disclosure Room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Written statements submitted by invited witnesses will be posted on the Advisory Council page of the EBSA Web site, without change, and can be retrieved by most Internet search engines.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary by email or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by June 5.

Signed at Washington, DC, this 9th day of May 2012.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2012–11588 Filed 5–11–12; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0108]

Spent Fuel Transportation Risk Assessment

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment a draft NUREG, NUREG–2125, ''Spent Fuel Transportation Risk Assessment (SFTRA).''

DATES: Submit comments by July 13, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0108.

You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0108. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John R. Cook, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3318; email: *John.Cook@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0108 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0108.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG is available electronically under ADAMS Accession No. ML12125A218. The draft NUREG will also be accessible through the NRC's public site under draft NUREGs for comment.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0108 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Discussion

The NRC is responsible for issuing regulations (Title 10 of the Code of Federal Regulations (10 CFR) part 71, ''Packaging and Transportation of Radioactive Waste,'' dated January 26, 2004) for the packaging and transport of spent nuclear fuel (and other large quantities of radioactive material) that provide for public health and safety during transport. In September 1977, the NRC published NUREG–0170, ''Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes,'' which assessed the adequacy of those regulations to provide safety assurance. In that assessment, the measure of safety was the risk of radiation doses to the public under routine and accident transport conditions, and the risk was found to be acceptable. Since that time there have been two affirmations of this conclusion for spent nuclear fuel (SNF) transportation, each using improved tools and information. This report presents the results of a fourth investigation into the safety of SNF transportation. The risks associated with SNF transportation come from the radiation that the spent fuel emits, which is reduced—but not eliminated—by the transportation cask's shielding, and from the possibility of the release of some quantity of radioactive material during a severe accident. This investigation shows that the risk from the radiation emitted from the cask is a small fraction of naturally occurring background radiation, and that the risk from accidental release of radioactive material is several orders of magnitude less. Because there have been only minor changes to the radioactive material transportation regulations between NUREG–0170 and this risk assessment, the calculated dose due to the radiation from the cask under routine transport conditions is similar to what was found in earlier studies. The improved analysis tools and techniques, improved data availability, and a reduction in the number of conservative assumptions has made the estimate of accident risk from the release of radioactive material in this study approximately five orders of magnitude less than what was estimated in NUREG–0170. The results demonstrate that the NRC regulations continue to provide adequate protection of public health and safety during the transportation of SNF. The staff is seeking any information that is germane to these results that the public may wish to offer.

Dated at Rockville, Maryland, this 4th day of May, 2012.

For the Nuclear Regulatory Commission.

Christian Araguas,

Acting Chief, Rules, Inspections, and Operations Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–11672 Filed 5–11–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0109]

Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–5028, ''Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants.'' In DG–5028, the NRC proposes to endorse a revised American National Standards Institute (ANSI) document, ANSI N15.8–2009, ''Methods of Nuclear Material Control—Material Control Systems—Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants.''

DATES: Submit comments by July 16, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0109. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0109. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard Jervey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7401 or email: *Richard.Jervey@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0109 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0109.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. DG–5028 is located under ADAMS Accession Number ML113550061. The regulatory analysis may be found under ADAMS Accession Number ML113550062.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0109 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, ''Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants,'' is temporarily identified by its task number, DG–5028. DG–5028 is proposed revision 2 of Regulatory Guide 5.29, dated June 1975.

The NRC withdrew Regulatory Guide 5.29 Revision 1 in January 1998 (63 FR 2426; January 15, 1998), because the underlying basis standard, ANSI N15.8–1974, ''Methods of Nuclear Material Control—Material Control Systems—Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants,'' did not include direction to support accountability of partial fuel assemblies. ANSI revised ANSI N15.8 in February 2009. ANSI N15.8–2009 provides guidance on the fundamentals of an SNM control and accounting system, including criteria for the receipt, internal control, physical inventory, and shipment of SNM. Additionally, ANSI N15.8–2009 provides specific guidance on the control and accounting of 1) fuel rods that are separated from their parent assemblies; and 2) pieces of irradiated material that are separated as a result of fuel damage. In DG–5028, the NRC is proposing to endorse ANSI N15.8–2009 as an acceptable method for implementing material control and accounting requirements at nuclear power plants.

Dated at Rockville, Maryland, this 7th day of May 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–11585 Filed 5–11–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2012–16 and CP2012–23; Order No. 1335]

Product List Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Parcel Select Contract 2 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* May 18, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 1 to the competitive product list.[1] The Commission notes there is already a Parcel Select Contract 1 on the competitive product list. *See* Docket Nos. MC2011–16 and CP2011–53. It is the Commission's intent to rename the proposed new product Parcel Select Contract 2. Participants may address the name of the new product in their comments.

The Postal Service asserts that Parcel Select Contract 1 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Postal Service states that the explanation and justification for this contract are provided by Governors' Decision No. 11–6, included as Attachment A to the Request.[2] The Request has been assigned Docket No. MC2012–16.

The Postal Service contemporaneously filed a contract related to the proposed new product. *Id.,* Attachment B. The contract has been assigned Docket No. CP2012–23.

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6;
- Attachment B—a redacted copy of the contract;
- Attachment C—a proposed change in the Mail Classification Schedule competitive product list;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

In the Statement of Supporting Justification, Karen F. Key, Manager, Shipping Products, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Ms. Key contends there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Parcel Select Contract 2 is included with the Request. *Id.,* Attachment B. The contract will become effective on the later of the day following the date on which the Commission issues all approvals on June 1, 2012. Request at 6. The contract will expire on May 31, 2019 unless, among other things, either party terminates the agreement for convenience upon 6 months' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.,* Attachment D.

The Postal Service filed much of the supporting materials, including the specific Parcel Select Contract 2, under seal. *Id.,* Attachment F. It maintains that redacted portions of the contract, Governors' Decision No. 11–6, and related financial information should remain confidential. *Id.* at 2–3. This information includes the price structure and terms, expected profit, underlying costs and assumptions, cost coverage projections, and customer-related information. *Id.* at 3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–16 and CP2012–23 to consider the Request pertaining to the proposed Parcel Select Contract 2 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than May 18, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–16 and CP2012–23 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than May 18, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–11581 Filed 5–11–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Parcel Select Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 7, 2012 (Request). The Request supersedes a similar filing submitted May 4, 2012. *See* Notice of the United States Postal Service of Filing Errata to Request and Notice, filed May 7, 2012.

[2] *Id.* at 1; Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, issued March 22, 2011 (Governors' Decision No. 11–6).

POSTAL SERVICE

Product Change—Parcel Select & Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 4, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–15, CP2012–22.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–11501 Filed 5–11–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 4, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–16, CP2012–23.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–11503 Filed 5–11–12; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's current marriage to the applicant is valid.

The requirements for obtaining documentary evidence to determine valid marital relationships are prescribed in 20 CFR 219.30 through 219.35. Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed to determine whether the employee's current marriage is valid. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

In accordance with amended regulation 20 CFR 217.17, the RRB proposes the implementation of Form G–346sum. Proposed Form G–346sum, which will mirror the information collected on Form G–346, will be used when an employee, after being interviewed by an RRB field office staff member ''signs'' the form using an alternative signature method known as ''attestation.'' Attestation refers to the action taken by the RRB field office employee to confirm and annotate the RRB's records of the applicant's affirmation under penalty of perjury that the information provided is correct and the applicant's agreement to sign the form by proxy. Completion is required to obtain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 62098 on October 6, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee's Certification.

OMB Control Number: 3220–0140.

Form(s) submitted: G–346 and G–346sum.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

Changes proposed: The RRB proposes no changes to Form G–346 and the implementation of new Form G–346sum.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
G–346	4,830	5	403
G–346sum	2,070	5	172
Total	6,900		575

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–11552 Filed 5–11–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Adrenalina, Affinity Technology Group, Inc., Braintech, Inc., Builders Transport, Incorporated, and Catuity, Inc.; Order of Suspension of Trading

May 10, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Adrenalina because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Affinity Technology Group, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Braintech, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Builders Transport, Incorporated because it has not filed any periodic reports since the period ended March 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Catuity, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 10, 2012, through 11:59 p.m. EDT on May 23, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–11701 Filed 5–10–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66946; File No. SR–NYSEArca–2012–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fee Schedule To Make Correction to the Tape A, Tape B, and Tape C Step Up Tiers

May 8, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 27, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fee Schedule (''Fee Schedule'') to make a correction to the Tape A, Tape B, and Tape C Step Up Tiers. The proposed change will be operative on May 1, 2012. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* and 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to make a correction to the Tape A, Tape B, and Tape C Step Up Tiers. These fees were adopted as of March 1, 2012.[4] As described in more detail below, in certain provisions of the Fee Schedule, the Exchange inadvertently made a reference to ''Baseline Month'' when it should have instead referred to ''billing month.''

Tape A Step Up Tier

Currently, the Tape A Step Up Tier allows ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0029 per share if they directly execute providing volume in Tape A Securities during the billing month (''Tape A Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's January 2012 (''Baseline Month'') Tape A Adding ADV (''Tape A Baseline ADV'') plus 0.075% of US Tape A Consolidated Average Daily Share Volume (''CADV'') for the *Baseline Month* or (b) the ETP Holder's or Market Maker's Tape A Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.

Additionally, if a firm's ratio of Tape A Baseline ADV to its total Tape A average daily volume (''ADV'') during the Baseline Month is less than 30%, the $0.0029 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 0.75% of the US Tape A CADV during the billing month. The rate of $0.0030 per share would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape A Adding ADV is greater than its Tape A Baseline ADV by at least 0.25% of the US Tape A CADV during the billing month. Investor Tier ETP Holders or Investor Tier Market Makers cannot qualify for the Tape A Step Up Tier.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 66568 (March 9, 2012), 77 FR 15819 (March 16, 2012) (SR–NYSEArca–2012–17) (the ''Release'').

The Exchange proposes to amend the Fee Schedule so that ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0029 per share if they directly execute providing volume in Tape A Securities during the billing month (''Tape A Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape A Adding ADV (''Tape A Baseline ADV'') plus 0.075% of US Tape A Consolidated Average Daily Share Volume (''CADV'') for the *billing month* or (b) the ETP Holder's or Market Maker's Tape A Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity. The Exchange does not propose to make any additional changes to the Tape A Step Up Tier.

Tape B Step Up Tier

Currently, the Tape B Step Up Tier allows ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0026 per share if they directly execute providing volume in Tape B Securities during the billing month (''Tape B Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape B Adding ADV (''Tape B Baseline ADV'') plus 0.25% of US Tape B CADV for the *Baseline Month* or (b) the ETP Holder's or Market Maker's Tape B Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.

Additionally, if a firm's ratio of Tape B Baseline ADV to its total Tape B ADV during the Baseline Month is less than 30%, the $0.0026 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 1.5% of the US Tape B CADV during the billing month. The rate of $0.0028 or $0.0030 per share, as applicable, would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape B Adding ADV is greater than its Tape B Baseline ADV by at least 0.45% of the US Tape B CADV during the billing month. Investor Tier ETP Holders, Investor Tier Market Makers, and Lead Market Makers (''LMMs'') cannot qualify for the Tape B Step Up Tier. In addition, LMM provide volume cannot apply to the Tape B Step Up Tier volume requirements.

The Exchange proposes to amend the Fee Schedule so that ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0026 per share if they directly execute providing volume in Tape B Securities during the billing month (''Tape B Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape B Adding ADV (''Tape B Baseline ADV'') plus 0.25% of US Tape B CADV for the *billing month* or (b) the ETP Holder's or Market Maker's Tape B Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity. The Exchange does not propose to make any additional changes to the Tape B Step Up Tier.

Tape C Step Up Tier

Currently, the Tape C Step Up Tier allows ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0029 per share if they directly execute providing volume in Tape C Securities during the billing month (''Tape C Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape C Adding ADV (''Tape C Baseline ADV'') plus 0.10% of US Tape C CADV for the *Baseline Month* or (b) the ETP Holder's or Market Maker's Tape C Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.

Additionally, if a firm's ratio of Tape C Baseline ADV to its total Tape C ADV during the Baseline Month is less than 30%, the $0.0029 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 1.1% of the US Tape C CADV during the billing month. The rate of $0.0030 per share would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape C Adding ADV is greater than its Tape C Baseline ADV by at least 0.33% of the US Tape C CADV during the billing month. Investor Tier ETP Holders or Investor Tier Market Makers cannot qualify for the Tape C Step Up Tier.

The Exchange proposes to amend the Fee Schedule so that ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of $0.0029 per share if they directly execute providing volume in Tape C Securities during the billing month (''Tape C Adding ADV'') that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape C Adding ADV (''Tape C Baseline ADV'') plus 0.10% of US Tape C CADV for the *billing month* or (b) the ETP Holder's or Market Maker's Tape C Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity. The Exchange does not propose to make any additional changes to the Tape C Step Up Tier.

The Exchange notes that the discrepancy did not have an adverse effect on ETP Holders with respect to March and April 2012 billing because the total market volume reported to the Consolidated Tape in January 2012, March 2012, and April 2012 was not significantly different.[5] However, going forward, the Exchange believes that, as intended in its original filing, the threshold should move in proportion to volume in the billing month in order to properly incentivize ETP Holders to post more volume on the Exchange. For example, if overall volume doubles in the current billing month, ETP Holders volume also may double in terms of shares, although their volumes relative to the entire market remain unchanged. The Exchange did not intend to offer the more favorable Step Up Tier rates in these circumstances, and as such, the correction to the calculation to reflect the billing month is necessary.

The proposed change will be operative on May 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the correction to the Fee Schedule is reasonable, equitable and not unfairly discriminatory because all similarly situated ETP Holders will be subject to the same fee structure. In particular, the Exchange intended to provide an option to qualify for the Step Up Tiers that would be based on a calculation of both

[5] The Exchange further notes that each of the examples in the footnotes of the Release correctly reflected the Exchange's intention to reference the billing month.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

the ETP Holder's providing volume in the Baseline Month and the billing month. The Exchange also believes the proposed amendments to the Tape A, Tape B, and Tape C Step Up Tiers will continue to incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- *Send an email to rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–36. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–36 and should be submitted on or before June 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11583 Filed 5–11–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66945; File No. SR–NYSEArca–2012–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Commentary .01 to NYSE Arca Rule 6.35

May 8, 2012.

On March 9, 2012, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .01 to NYSE Arca Rule 6.35 and to make non-substantive changes to NYSE Arca Rules 6.35, 6.37, 6.84, and 10.12. The proposed rule change was published for comment in the **Federal Register** on March 28, 2012.[3] The Commission received no comments on this proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 12, 2012. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which would allow a market maker's trades effected on the trading floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 to count toward the requirement that at least 75% of a market maker's trading activity be effected in classes within the market maker's appointment.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 26, 2012 as the date by which the Commission should either

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66642 (March 22, 2012), 77 FR 18875.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2012–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11536 Filed 5–11–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66944; File No. SR–BX–2012–029]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Exchange's Co-Location Super High Density Cabinet Monthly Fee

May 8, 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 27, 2012, The NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the Exchange's co-location super high-density cabinet monthly fee. The Exchange will implement the proposed change on May 1, 2012.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is modifying Rule 7034(a) by reducing its co-location super high-density cabinet on-going monthly fee from $15,000 per month to $13,000 per month. The installation fee for the super high-density cabinet will remain the same.

Co-location customers have the option of obtaining several cabinet sizes and power densities. The co-located customer may obtain a half cabinet, a low density cabinet, a medium density cabinet, a medium-high density cabinet and a high density cabinet.[3] Each cabinet may vary in size and maximum power capacity. The fees related to the cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment. The co-location customer may obtain more power by choosing a combination of lower power density cabinets.

The Exchange previously filed an immediately effective filing with the Commission to offer another choice of cabinet, specifically a larger cabinet (30″ W x 48″ D x 96″ H) with higher power (''Super High Density Cabinet'') as an alternative to combining several units for more power (>10kW<=17.3kW).[4] Currently, the installation fee for the Super High Density Cabinet is $7,000; and the on-going monthly fee is $15,000. At this time, the Exchange proposes to reduce the current on-going monthly fee to $13,000 to bring the fee in line with Exchange fees for similar power levels using multiple cabinets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes the proposed reduction of the on-going monthly fee is reasonable because it is in line with Exchange fees for similar power levels using multiple cabinets. The Exchange also believes the reduction in the on-going monthly fee is equitable and not unfairly discriminatory because the super high-density power option is entirely voluntary and available to all members; therefore, the reduction is available to all members that select this power option. Also, the Exchange also believes the reduction in fees is equitable and not unfairly discriminatory because the reduction diminishes the disparity in the Exchange's fees for various co-location power options. This results in a more competitive cost structure for the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other trading venues. These competitive forces help to ensure that the Exchange's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their operating venue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange is reducing fees through this proposed rule change, thereby enhancing the competitiveness of its co-location offering.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time

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[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 7034(a).

[4] *See* Securities Exchange Act Release No. 66542 (March 8, 2012), 77 FR 15169 (March 14, 2012) (SR–BX–2012–012)[sic].

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(a)(ii)[sic].

within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–029. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–029 and should be submitted on or before June 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11535 Filed 5–11–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66943; File No. SR–NASDAQ–2012–054]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NASDAQ Co-Location Super High Density Cabinet Monthly Fee

May 8, 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 27, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NASDAQ co-location super high-density cabinet monthly fee. The Exchange will implement the proposed change on May 1, 2012.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is modifying Rule 7034(a) by reducing its co-location super high-density cabinet on-going monthly fee from $15,000 per month to $13,000 per month. The installation fee for the super high-density cabinet will remain the same.

Co-location customers have the option of obtaining several cabinet sizes and power densities. The co-located customer may obtain a half cabinet, a low density cabinet, a medium density cabinet, a medium-high density cabinet and a high density cabinet.[3] Each cabinet may vary in size and maximum power capacity. The fees related to the cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment. The co-location customer may obtain more power by choosing a combination of lower power density cabinets.

The Exchange previously filed an immediately effective filing with the Commission to offer another choice of cabinet, specifically a larger cabinet (30″ W x 48″ D x 96″ H) with higher power (''Super High Density Cabinet'') as an alternative to combining several units for more power (>10kW≤17.3kW).[4] Currently, the installation fee for the Super High Density Cabinet is $7,000; and the on-going monthly fee is $15,000. At this time, the Exchange proposes to reduce the current on-going monthly fee to $13,000 to bring the fee in line with Exchange fees for similar power levels using multiple cabinets.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 7034(a).

[4] *See* Securities Exchange Act Release No. 66010 (December 20, 2011), 76 FR 80993 (December 27, 2011) (SR–NASDAQ–2011–160).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes the proposed reduction of the on-going monthly fee is reasonable because it is in line with Exchange fees for similar power levels using multiple cabinets. The Exchange also believes the reduction to the on-going monthly fee is equitable and not unfairly discriminatory because the super high-density power option is entirely voluntary and available to all members; therefore, the reduction is available to all members that select this power option. Also, the Exchange believes the reduction in fees is equitable and not unfairly discriminatory because the reduction diminishes the disparity in the Exchange's fees for various co-location power options. This results in a more competitive cost structure for the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other trading venues. These competitive forces help to ensure that NASDAQ's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their operating venue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ is reducing fees through this proposed rule change, thereby enhancing the competitiveness of its co-location offering.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–NASDAQ–2012–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–054. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–054 and should be submitted on or before June 4, 2012.

[7] 15 U.S.C. 78s(b)(3)(a)(ii)[sic].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11534 Filed 5–11–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66941; File No. SR–CME–2012–06]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Order Approving Proposed Rule Change To Amend Rules Related to Credit Default Swap Guaranty Fund Allocations, End-of-Day Pricing Procedures, Daily Submission Deadlines, Holiday Accrual Processing, and the Price Alignment Interest Payment Timeline

May 8, 2012.

I. Introduction

On March 9, 2012, Chicago Mercantile Exchange (''CME'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–CME–2012–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 29, 2012.[3] The Commission received no comment letters regarding this proposal. For the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Release No. 34–66646 (March 22, 2012), 77 FR 19045 (March 29, 2012).

reasons discussion below, the Commission is granting approval of the proposed rule change.

II. Description

CME currently offers clearing services for certain credit default swap (''CDS'') index products. CME proposes to amend certain of its rules that would generally affect its CDS clearing offering and to make corresponding amendments to certain sections of its Manual of Operations for CME Cleared Credit Default Swaps (''CDS Manual''). The rule amendments would modify CME's CDS guaranty fund allocation methodology, end-of-day pricing procedures, daily submission deadlines, holiday accrual processing, and the timeline for price alignment interest (''PAI'') payment timeline.

The proposed changes to text in the CME rulebook would amend current requirements found in CME Rule 8H07.1 relating to the allocation of the CDS guaranty fund requirements among CDS clearing members. Currently, CME calculates its guaranty fund monthly and proportionally allocates to each CDS clearing member a guaranty fund requirement based on the CDS clearing member's 90-day trailing average of its potential residual loss and 90-day trailing average of its gross notional open interest outstanding at CME. CME is proposing to change the measurement period from 90 days to 30 days so that a CME clearing member's CDS guaranty fund requirement more quickly react to the CDS clearing member's current activity and to align the measurement period with the frequency of CDS guaranty fund calculations.

The proposed changes to the text of the CDS Manual would modify end-of-day pricing procedures including procedures for CDS price submissions, crossing, and auction procedures that CME uses to arrive at the settlement price for CDS contracts. Currently, CME requires CDS clearing members to submit price levels for the full term structures of all indices and single-name reference entities by seniority, restructuring type, and currency eligible for clearing. If a CDS clearing member chooses to submit price levels on a cleared contract in which it does not hold open interest, CME hold that price submission as tradable if a cross occurs and the submitted instrument is selected pursuant to the auction process. However, under CME's current procedures, submitted price levels for non-cleared instruments are never actionable (*i.e.,* tradable). CME is proposing to change it CDS Manual to require CDS clearing members to submit price levels for all cleared contracts in which they or their customers hold open interest. For indices where CDS clearing members are required to submit the full clearing eligible tenors of all indices, CME will only cross CDS clearing members on the tenors in which the CDS clearing members or their customers hold open interest. For single-name CDS, CME will require CDS clearing members to submit mid price levels for the full term structures for the 0, 0.5-, 1-, 2-, 3-, 4-, 5-, 7- and 10-year tenors. However, CME may cross the CDS clearing members on any single-name reference entity in which the CDS clearing members or their customer(s) hold open interest irrespective of tenor.

CME is also amending its CDS Manual to change (1) the daily submission deadlines for CDS, (2) the CDS holiday accrual processing, and (3) the PAI payment timeline. With respect to operations timelines and reports, CME would move up the trade submission deadline for current day trades from 7:59 p.m. ET to 6:59 p.m. ET. With respect to position management, money calculations, and collateral, the revisions to the CDS Manual would require on bank holidays in the country of which the swap is denominated (*e.g.,* Independence Day for U.S. Dollar denominated CDS contracts), accrual processing would be included in the processing for the next business day and would not occur on the relevant bank holiday. In addition, CME would calculate and pay PAI for CDS contracts on a daily basis as opposed to monthly.

III. Discussion

Section 19(b)(2)(C) of the Act 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.[4] In particular, Section 17A(b)(3)(F)[5] of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. By making CDS clearing members' guaranty fund requirements be based on relatively more recent histories, the proposed amended rule governing guaranty fund allocations should improve CME's ability to react to CDS market dynamics and thereby should help CME better assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. As such, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act. Also, the requirement that CDS clearing members submit pricing for all tenors of clearing-eligible indices and for the full term structure for single-name CDS should enhance CME's ability to derive end-of-day settlement prices. In addition, because the operational changes CME is proposing would generally require clearing members to made trade submissions more promptly, require CME to calculate price alignment more frequently, and clarify when price accrual processing occurs in the event of a bank holiday, such a change should promote the prompt and accurate clearance and settlement of securities transactions and 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 the proposal is consistent with the requirements of the Act and in particular with the requirements of 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–CME–2012–06), be, and hereby is, approved.[6]

For the Commission, by the Division of Trading and markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11533 Filed 5–11–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(B)(3)(F).

[6] 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).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66940; File No. SR–CME–2012–14]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Applicable to OTC S&P GSCI–ER Swaps Contracts

May 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 25, 2012, Chicago Mercantile Exchange, Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III, below, which Items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is proposing to amend the fee schedule that currently applies to its OTC S&P GSCI–ER swaps clearing offering.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME 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. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[5]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently offers clearing for certain OTC swap products. CME proposes to change the fee structure for cleared swap contracts in S&P GSCI–ER, S&P GSCI Gold ER, S&P GSCI Crude Oil ER, S&P GSCI–ER 2 Month Forward and S&P GSCI ER 3 Month Forward. As the proposed changes relate to fees, they became effective when they were filed on April 25, 2012. CME applied the new fee structure, however, only to contract months with a trade date of May 1, 2012 or later.

Currently, fees for these OTC swap products are assessed as a portion (.0005 annually) of the notional value of the open positions in the contracts. This contrasts with the flat fees CME charges on futures and options on futures products. CME believes the marketplace would prefer a fee structure for OTC swap products that charges fees on a per contract basis. This type of fee structure is also easier to support from an operational standpoint. CME expects this change will attract additional interest and liquidity in these products.

CME has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), in CME Submission 12–119.

The proposed CME rule amendments establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder. CME believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, particularly, Section 17A(b)(3)(D),[6] in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties. CME will notify the Commission of any written comments received by CME.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change was filed pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and Rule 19b–4(f)(2)[8] thereunder, and thus became effective upon filing because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days after the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or by sending an email to *rule-comment@sec.gov.* Please include File No. SR–CME–2012–14 on the subject line.
- Paper comments should be sent 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–CME–2012–14. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME, and on CME's Web site at *http://www.cmegroup.com/market-regulation/files/SEC_19b-4_12-14.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by CME.

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–CME–2012–14 and should be submitted on or before June 4, 2012.

For the Commission, by the Division of Trading and markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11532 Filed 5–11–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13065 and #13066]

Hawaii Disaster Number HI–00026

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–4062–DR), dated 04/18/2012.

Incident: Severe Storms, Flooding, and Landslides.

Incident Period: 03/03/2012 through 03/11/2012.

Effective Date: 05/04/2012.

Physical Loan Application Deadline Date: 06/18/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 01/18/2013.

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 State of HAWAII, dated 04/18/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Maui.

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. 2012–11587 Filed 5–11–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7880]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gustav Klimt: The Magic of Line''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Gustav Klimt: The Magic of Line,'' 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 J. Paul Getty Museum, Los Angeles, California, from on or about July 3, 2012 until on or about September 23, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 8, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–11619 Filed 5–11–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7881]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gauguin, Cézanne, Matisse: Visions of Arcadia''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Gauguin, Cézanne, Matisse: Visions of Arcadia,'' 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 Philadelphia Museum of Art, Philadelphia, Pennsylvania, from on or about June 20, 2012 until on or about September 3, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 8, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–11622 Filed 5–11–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7873]

Meetings of the United States-Peru Environmental Affairs Council, Environmental Cooperation Commission and Sub-Committee on Forest Sector Governance

ACTION: Notice of meetings of the United States-Peru Environmental Affairs Council, Environmental Cooperation Commission and Sub-Committee on Forest Sector Governance, and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the United States and Peru intend to hold the fifth meeting of the Sub-Committee on Forest Sector

Governance (the ''Sub-Committee'') on May 29, 2012, and the third meeting of the Environmental Affairs Council (the ''Council'') and the second meeting of the Environmental Cooperation Commission (the ''Commission'') on May 31, 2012. The public sessions for the Council and Sub-Committee also will be held on May 31, at 2:00 p.m. The entire meeting of the Commission will be open to the public and will begin at 3:45 p.m. All meetings will take place at 1724 F St. NW., Washington, DC.

The purpose of the meetings is to review implementation of: Chapter 18 (Environment) of the United States-Peru Trade Promotion Agreement (PTPA); the PTPA Annex on Forest Sector Governance (Annex 18.3.4); the United States-Peru Environmental Cooperation Agreement (ECA); and the 2011–2014 Work Program under the ECA.

The Department of State and USTR invite interested organizations and members of the public to attend the public sessions and Commission meeting, and to submit written comments or suggestions regarding implementation of Chapter 18, Annex 18.3.4, the ECA, or the 2011–2014 Work Program, and any items that should be included on the meetings' agendas. If you would like to attend the public sessions or Commission meeting, please notify Tiffany Prather and Amy Karpel at the email addresses listed below under the heading **ADDRESSES**. Please include your full name and any organization or group you represent.

In preparing comments, submitters are encouraged to refer to:

- Chapter 18 of the PTPA, including Annex 18.3.4,
- The Final Environmental Review of the PTPA,
- The ECA, and
- The 2011–2014 Work Program.

These documents are available at: *http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa* and *http://www.state.gov/e/oes/env/trade/peru/index.htm*.

DATES: The public sessions of the Council, Sub-Committee and Commission meetings will be held on May 31, 2012, beginning at 2:00 p.m., at 1724 F St. NW., Washington, DC. Comments and suggestions are requested in writing no later than May 23, 2012.

ADDRESSES: Written comments and suggestions should be submitted to both:

(1) Tiffany Prather, Office of Environmental Policy, U.S. Department of State, by electronic mail at *PratherTA@state.gov* with the subject line ''U.S.-Peru EAC/ECC/Sub-Committee Meetings''; and

(2) Amy Karpel, Office of Environment and Natural Resources, Office of the United States Trade Representative, by electronic mail at *Amy_Karpel@ustr.eop.gov* with the subject line ''U.S.-Peru EAC/ECC/Sub-Committee Meetings''.

If you have access to the Internet, you can view and comment on this notice by going to *http://www.regulations.gov/#!home* and searching on its Public Notice number: 7873.

FOR FURTHER INFORMATION CONTACT: Tiffany Prather, Telephone (202) 647–4548 or Amy Karpel, Telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: The PTPA entered into force on February 1, 2009. Article 18.6 of the PTPA establishes an Environmental Affairs Council, which is required to meet at least once a year or as otherwise agreed by the Parties to discuss the implementation of, and progress under, Chapter 18. Annex 18.3.4 of the PTPA establishes a Sub-Committee on Forest Sector Governance. The Sub-Committee is a specific forum for the Parties to exchange views and share information on any matter arising under the PTPA Annex on Forest Sector Governance. The ECA entered into force on August 23, 2009. Article III of the ECA establishes an Environmental Cooperation Commission and makes the Commission responsible for developing a Work Program. Chapter 18 of the PTPA and Article VI of the ECA require that meetings of the Council and Commission respectively include a public session, unless the Parties otherwise agree. At its first meeting, the Sub-Committee on Forest Sector Governance committed to hold a public session after each Sub-Committee meeting.

Dated: May 7, 2012.

George N. Sibley,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 2012–11624 Filed 5–11–12; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on June 7, 2012, in Binghamton, New York. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: June 7, 2012, at 9:00 a.m.

ADDRESSES: Binghamton State Office Building, Warren Anderson Community Room (18th Floor), 44 Hawley Street, Binghamton, N.Y. 13901.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436.

Opportunity To Appear and Comment

Interested parties are invited to attend the business meeting and encouraged to review the Commission's Public Meeting Rules of Conduct, which are posted on the Commission's Web site, *www.srbc.net.* As identified in the public hearing notice referenced below, written comments on the Regulatory Program projects, amendment to its Regulatory Program Fee Schedule, amendment to its Records Processing Fee Schedule, and amendment to the Comprehensive Plan for the Water Resources of the Susquehanna River Basin that were the subject of the public hearing, and are listed for action at the business meeting, are subject to a comment deadline of May 21, 2012. Written comments pertaining to any other matters listed for action at the business meeting may be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically through *http://www.srbc.net/pubinfo/publicparticipation.htm.* Any such comments mailed or electronically submitted must be received by the Commission on or before June 1, 2012, to be considered.

SUPPLEMENTARY INFORMATION: The business meeting will include actions on the following items: (1) Election of officers for FY–2013; (2) update on the Low Flow Protection Policy; (3) the proposed Water Resources Program; (4) amendment to its Records Processing Fee Schedule; (5) amendments to its Regulatory Program Fee Schedule; (6) authorization to refinance the Curwensville Water Storage Project; (7) adoption of a FY–2014 budget; (8) amendment of the Comprehensive Plan for the Water Resources of the Susquehanna River Basin; (9) a request for administrative appeal from Anadarko E&P Company LP—Well PW–11 (Council Run)—Pending No. 2011–021; and (10) Regulatory Program projects. Projects, proposed fee schedules, and amendment to the comprehensive plan listed for Commission action are those that were

the subject of a public hearing conducted by the Commission on May 10, 2012, and identified in the notice for such hearing, which was published in 77 FR 23319, April 18, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806, 807, and 808.

Dated: May 3, 2012.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2012–11479 Filed 5–11–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257: Notice No. 70]

Railroad Safety Advisory Committee; Charter Renewal

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Charter Renewal of the Railroad Safety Advisory Committee (RSAC).

SUMMARY: FRA announces the charter renewal of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. This charter renewal will take effect on May 17, 2012, and will expire after 2 years.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Designated Federal Officer/Administrative Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Acting Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of the charter renewal for the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 63 voting representatives from 37 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, the Transportation Safety Administration, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on pending tasks at *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996, 61 FR 9740, for additional information about the RSAC.

Dated: Issued in Washington, DC, on May 8, 2012.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012–11567 Filed 5–11–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Draft Environmental Impact Statement for the Central Corridor Light Rail Transit Project, Minneapolis and Saint Paul, MN

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) as the federal lead agency, in cooperation with the Metropolitan Council, is issuing this notice of intent (NOI) to advise interested parties that it proposes to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the Central Corridor Light Rail Transit (LRT) Project, located in Minneapolis and Saint Paul, Minnesota (Project). The Project is 10.9 miles long and consists of 23 Central Corridor Light Rail Transit (LRT) stations. The SDEIS will evaluate potential impacts on the loss of business revenue during construction of the Central Corridor LRT Project and will be prepared in accordance with the National Environmental Policy Act (NEPA), its implementing regulations, and provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

FOR FURTHER INFORMATION CONTACT: Sheila Clements, Supervisory Community Planner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, Illinois 60606, Telephone: (312) 353–1552.

SUPPLEMENTARY INFORMATION: The Central Corridor LRT is 10.9-miles in length, of which 9.7 miles consists of new alignment and 1.2 miles uses the existing Hiawatha LRT alignment in downtown Minneapolis. The Project will connect the Minneapolis and Saint Paul downtown areas as well as the University of Minnesota and the State Capitol complex. The purpose of the Project is to meet the future transit needs of the Central Corridor and the Region and to support the economic development goals for the Corridor. It allows the opportunity to provide a direct connection to the existing 11.6-mile Hiawatha LRT line in Minneapolis thereby, increasing mobility options within the Region.

In June 2009, FTA, in cooperation with the Metropolitan Council, prepared a Final Environmental Impact Statement (FEIS) on the Project. FTA issued a Record of Decision (ROD) on the Project in August 2009. Subsequent to FTA's issuance of the ROD, the U.S. District Court for the District of Minnesota determined that the FEIS did not adequately evaluate potential impacts on the loss of business revenue during construction of the Project and that these impacts must be evaluated through a supplemental environmental review. *Memorandum Opinion and Order,* Civil No. 10–147, (Jan. 26, 2011). Pursuant to the court's order, FTA, in cooperation with the Metropolitan Council, prepared a Supplemental Environmental Assessment (SEA) pursuant to its NEPA implementing regulations, which was issued in February 2011. Subsequent to FTA's issuance of the SEA, the court determined that FTA must also prepare a supplemental environmental review using the format of an Environmental Impact Statement. *Memorandum Opinion and Order,* Civil No. 10–147, (Jan. 23, 2012). Thus, the SDEIS that will be prepared pursuant to this notice of intent will evaluate potential impacts on the loss of business revenue during construction of the Central Corridor LRT Project. This notice of intent is being published at this time to notify interested parties and invite participation in the study.

Notice regarding the intent to prepare the SDEIS will be sent to the appropriate Federal, State, and local agencies that have expressed or are known to have an interest or legal role in this proposed action. When complete, the SDEIS will be made available for public and agency review and comment prior to any public hearings. Following publication, review, and approval of the SDEIS, a FEIS will be prepared and circulated.

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as

possible distribution of complete printed sets of NEPA documents. Accordingly, unless a specific request for a complete printed set of the NEPA document is received before the document is printed, FTA and its grant applicants will distribute only electronic copies of the NEPA document. A complete printed set of the environmental document will be available for review at the Metropolitan Council's offices and elsewhere; an electronic copy of the complete environmental document will be available on the Metropolitan Council's Central Corridor Project Web site (*http://www.centralcorridor.org*).

Issued on: May 8, 2012.

Marisol Simon,

Regional Administrator, FTA Region V.

[FR Doc. 2012–11566 Filed 5–11–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 8, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 13, 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 the (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 to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0111.

Type of Review: Extension without change of a currently approved collection.

Title: COLAs Online Access Request.

Form: TTB F 5013.2.

Abstract: The information on this form will be used by TTB to authenticate end users of the system to electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted to records in multiple databases.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 410.

OMB Number: 1513–0118.

Type of Review: Extension without change of a currently approved collection.

Title: Formulas for Fomented Beverage Products.

Abstract: Formula information is necessary to protect the public and collect revenue. Brewers must submit written notices to obtain formula approval.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–11520 Filed 5–11–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

2012 Draft Report: Strategies for Serving Our Women Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) established the Women Veterans' Task Force in July 2011, to develop a comprehensive action plan for VA that will focus on resolving critical issues facing women Veterans. The 2012 Draft Report: Strategies for Serving Our Women Veterans is now complete. VA is inviting public comments on the Draft Report.

DATES: Written comments must be received by VA on or before June 13, 2012.

ADDRESSES: Although VA prefers electronic submission of public comments through *www.regulations.gov* written comments may be submitted through mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420, or by fax to (202) 273–9026. This is not a toll free number. Please view and download the Women Veterans' Task Force Draft Report for public comment at *http://www.va.gov/opa/publications/Draft_2012_Women-Veterans_StrategicPlan.pdf.* Please write ''Strategies for Serving Our Women Veterans Draft Report for Public Comment'' in the subject line of your letter or email. Copies of all comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll free number. Comments may also be viewed online during the comment period, through the Federal Docket Management System at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Carstensen, Senior Advisor to the Secretary, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 8, 2012, for publication.

Dated: May 9, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–11616 Filed 5–11–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 93 May 14, 2012

Part II

Environmental Protection Agency

40 CFR Parts 50, 51 and 81

Final Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Classification of Areas That Were Initially Classified Under Subpart 1; Revision of the Anti-Backsliding Provisions To Address 1-Hour Contingency Measure Requirements; Deletion of Obsolete 1-Hour Ozone Standard Provision; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51 and 81

[EPA–HQ–OAR–2007–0956; FRL–9668–4]

RIN 2060–AO96

Final Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Classification of Areas That Were Initially Classified Under Subpart 1; Revision of the Anti-Backsliding Provisions To Address 1-Hour Contingency Measure Requirements; Deletion of Obsolete 1-Hour Ozone Standard Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is revising the rules for implementing the 1997 8-hour ozone national ambient air quality standards (NAAQS) to address certain limited portions of the rules vacated by the U.S. Court of Appeals for the District of Columbia Circuit. This final rule assigns Clean Air Act (CAA or Act) classifications and associated state planning and control requirements to selected ozone nonattainment areas. This final rule also addresses three vacated provisions of the 1997 8-hour NAAQS—Phase 1 Implementation Rule (April 30, 2004) that provided exemptions from the anti-backsliding requirements relating to nonattainment area New Source Review (NSR), CAA section 185 penalty fees, and contingency measures, as these three requirements applied for the 1-hour standard. This rule also reinstates the 1-hour contingency measures as applicable requirements that must be retained until the area attains the 1997 8-hour ozone standard. Finally, this rule deletes an obsolete provision that stayed the EPA's authority to revoke the 1-hour ozone standard pending the Agency's issuance of a final rule that revises or reinstates its revocation authority and considers and addresses certain other issues. That rule has now been issued.

DATES: This rule is effective on June 13, 2012.

ADDRESSES: The EPA has established a docket for this rule, identified by Docket ID No. EPA–HQ–OAR–2007–0956. All documents in the docket are listed in *www.regulations.gov.* 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 in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For further general information or information on classification of former subpart 1 areas, contact Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (C539–01), Research Triangle Park, NC 27711, phone number (919) 541–2363, fax number (919) 541-0824 or by email at *stackhouse.butch@epa.gov*. For information on the 1-hour contingency measures associated with the 1-hour ozone standard contact Mr. H. Lynn Dail, Office of Air Quality Planning and Standards, (C504–03), U.S. EPA, Research Triangle Park, North Carolina 27711, phone number (919) 541–2363, fax number (919) 541–0824, or by email at *dail.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this action include State, local, and tribal governments and specifically include the areas identified in Table 1.

TABLE 1—AFFECTED AREAS INITIALLY CLASSIFIED UNDER SUBPART 1

State	Area
Arizona	Phoenix-Mesa.
California	Amador and Calaveras Counties (Central Mountain), Chico, Kern County (Eastern Kern), Mariposa and Tuolumne Counties (Southern Mountain), Nevada County, San Diego, Sutter County (Sutter Buttes).
Colorado	Denver, Boulder, Greeley, Ft. Collins & Loveland.
Nevada	Las Vegas.
New York	Albany-Schenectady-Troy, Buffalo-Niagara Falls, Essex County (Whiteface Mtn.), Jamestown, Rochester.
Pennsylvania	Pittsburgh-Beaver Valley.

Entities potentially affected indirectly by this action include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X), the two pollutants that contribute to ground-level ozone concentrations.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice is also available on the World Wide Web. A copy of this notice will be posted at *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/*.

C. How is this document organized?

The information presented in this Document is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. How is this document organized?
II. What is the background for this rule?
III. This Action
A. Classification of 8-Hour Ozone Nonattainment Areas That the EPA Had Classified Under Subpart 1
1. The Proposal
2. Final Rule
3. Comments and Responses
a. Classification of Former Subpart 1 Areas
b. Timing of SIP Submission Under Subpart 2 Classification
c. Timing of Attainment Date
d. Data Used for Classification
e. Other Comments on Classification of Former Subpart 1 Areas
B. Anti-Backsliding Under Revoked 1-Hour Ozone Standard-In General
1. Proposal
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II. What is the background for this rule?

On January 16, 2009, the EPA proposed revisions to the Phase 1 Rule for implementing the 1997 8-hour ozone NAAQS [1] (Phase 1 Rule) to address several of the limited portions of the rule vacated by the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management District, et al.,* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). (*South Coast*). The proposal addressed the classification system for the subset of initial 8-hour ozone nonattainment areas that the Phase 1 Rule originally covered under CAA title I, part D, subpart 1. The proposal also addressed how contingency measures that are triggered by failure to attain or make reasonable progress toward attainment of the 1-hour standard should apply under the anti-backsliding provisions of the Phase 1 Rule. In addition, the proposal identified the vacated provisions of the rule that provided exemptions from the anti-backsliding requirements relating to 1-hour nonattainment NSR, the CAA section 185 penalty fees for failure to attain the 1-hour standard, and contingency measures as these requirements applied for the 1-hour standard. In the proposal, we planned to remove these provisions from the regulatory text in 40 CFR 51.905(e). Finally, we proposed to delete a provision that stayed the EPA's authority to revoke the 1-hour ozone standard. A more detailed description of the background for this rule appears in the January 16, 2009, notice of proposed rulemaking (74 FR 2936).

[1] 74 FR 2936, January 16, 2009.

III. This Action

A. Classification of 8-Hour Ozone Nonattainment Areas That the EPA Had Classified Under Subpart 1

There are a number of areas currently designated nonattainment for the 1997 8-hour ozone NAAQS (0.08 parts per million (ppm)) that originally did not receive a classification under subpart 2. In this action, the EPA is establishing initial classifications for these 16 areas and immediately finalizing the proposed reclassifications to Moderate for the areas that would be classified as Marginal but that failed to meet the June 15, 2007 attainment date for Marginal areas for the 1997 ozone NAAQS.

Based on the area classifications, the CAA establishes certain planning and control requirements for the areas, and in this rule, the EPA is specifying the deadlines by which states must submit plans to meet these requirements. Once the ozone air quality in these areas meets the 1997 8-hour standard, certain of these requirements may be suspended by a determination of attainment (Clean Data Determination, pursuant to 40 CFR 51.918, 70 FR 71702). The obligation to complete and submit those requirements would be suspended as long as the area continues to attain the standard, and would no longer apply once the area is redesignated to attainment following the requirements of CAA 107(d)(3). However, other requirements will continue to apply, and appropriate SIP elements must be submitted and approved prior to redesignation to attainment.

1. The Proposal

In the January 16, 2009, proposed rule, the EPA proposed that all areas designated nonattainment for the 1997 8-hour ozone standard would be classified under and subject to the nonattainment planning requirements of subpart 2. We proposed to modify the regulatory text to remove current § 51.902(b), which was vacated by the Court and which subjected certain nonattainment areas to regulation only under subpart 1.[2] The Court vacated the Phase 1 rule to the extent it placed certain areas solely under the implementation provisions of subpart 1. Therefore, the proposal addressed which provisions of the CAA should apply to those areas.[3]

We also noted that the classifications that would be established pursuant to this final rule would be the initial classifications for the affected areas for the 1997 ozone standard. Therefore, we proposed to use the 2003 8-hour ozone design values (derived from 2001–2003 air quality data), which were used to designate these areas nonattainment initially, as the basis for classification. We also proposed to use the classification table in 40 CFR 51.903 (established by the Phase 1 Rule) to classify these areas. We noted that CAA section 181(a) provides that ''at the time'' areas are designated for the ozone NAAQS, they will be classified ''by operation of law'' based on the ''design value'' of the areas and in accordance with Table 1 of that section. We concluded that this language specifies that the area will be classified based on the design value that existed for the area at the time of designation. Areas were designated nonattainment in 2004, based on design values derived from data from 2001–2003.

Since the classifications under this proposal would be the initial classifications for the 1997 8-hour standard for the affected areas, the EPA proposed that the provision of CAA section 181(a)(4) would apply to these areas. This provision would allow the Administrator in her discretion to adjust the classification—within 90 days after the initial classification—to a higher or lower classification ''* * * if the design value were 5 percent greater or 5 percent less than the level on which such classification was based.'' The EPA proposed to address requests for such classification adjustments for the newly-classified areas in a manner similar to the way requests were handled for the original round of subpart 2 classifications in 2004. This process is described at 69 FR 23863 *et seq.* (April 30, 2004). We indicated in the proposal, however, that if a state requests a reclassification from Moderate to

[2] As the Court made clear in its decision on rehearing, the CAA does not mandate coverage under subpart 2 of all areas designated nonattainment for an ozone NAAQS. As EPA moves forward to develop an implementation strategy for any future new ozone NAAQS, we may consider whether subpart 1 alone might apply for some areas for purposes of implementing that NAAQS.

[3] We note that areas subject to subpart 2 are also subject to subpart 1 to the extent subpart 1 specifies requirements that are not suspended by more specific obligations under subpart 2.

Marginal for an area that is currently violating the standard, the EPA would not grant the request for the reclassification because the Marginal attainment deadline has already passed.

We noted that the classification table of 40 CFR 51.903 provides an outside attainment date based on the number of years after the effective date of the nonattainment designation (e.g., 3 years for Marginal and 6 years for Moderate). For all nonattainment areas other than Denver, the effective date of designation for the 8-hour standard was June 15, 2004. Thus, Marginal nonattainment areas (with the exception of Denver) had a maximum statutory attainment date of June 15, 2007. Since the Marginal area attainment date has passed, the EPA proposed that any area that would be classified as Marginal based on its 2003 design value and that had not attained by June 15, 2007, or that did not meet the criteria for an attainment date extension under CAA section 181(a)(5)(B) and 40 CFR 51.907, would be reclassified immediately as Moderate under the final rule.

In addition, we noted that a number of areas that were initially placed in subpart 1 under the vacated provision of the Phase 1 Rule have since been redesignated to attainment for the 1997 8-hour standard. We indicated that since these areas are now designated attainment for the 1997 8-hour standard, the classification provisions of the final rule would not apply.

In the proposal, the EPA took the position that transportation conformity requirements, and current transportation plan and transportation improvement program conformity determinations for the 1997 8-hour ozone standard remain valid, and would not be impacted by this final action. These areas are already required to satisfy the applicable CAA section 176(c) conformity requirements for the 1997 8-hour ozone standard based on their nonattainment designation in June 2004. Thus, no new conformity deadline would be triggered for these areas after the areas are classified under subpart 2. These areas would continue to make future conformity determinations according to the applicable requirements of 40 CFR 93.109(d) and (e). The EPA indicated that any areas classified as Moderate that are using the interim emissions tests would be required to meet additional test requirements that do not apply to Marginal areas [40 CFR 93.119(b)(1)]. Moderate ozone nonattainment areas are required to satisfy both interim emissions tests in order to demonstrate conformity. Therefore, any area classified as Moderate would be required to demonstrate that emissions in the build scenario are less than the no-build scenario and that emissions in the build scenario are less than emissions in the 2002 base year. Marginal areas are required to demonstrate conformity using the ''no greater than'' form of one of the two interim emissions tests [40 CFR 93.119(b)(2)(i) and 40 CFR 93.119(b)(2)(ii)(A)&(B)].

The EPA proposed to require states to submit all required State Implementation Plan (SIP) elements of the areas' Marginal or Moderate classification no later than 1 year after the effective date of this final rule. The proposal noted that the EPA believed this to be an appropriate and reasonable amount of time given the attainment dates that will apply to these areas, and that these areas should have made significant progress toward developing SIPs, originally due June 15, 2007, based on the obligations that applied before the subpart 1 provision of the Phase 1 Rule was vacated in December 2006.

2. Final Rule

The final rule generally reflects the approach we proposed. The final rule provides that:

- All areas originally placed under subpart 1 and that remain designated nonattainment for the 1997 8-hour ozone standard at the time of this final rule are now classified under and subject to the nonattainment planning and emissions control requirements of subpart 2, sections 181–185. There are sixteen such areas.
- Initial classifications are based on the 8-hour ozone design values (derived from 2001–2003 air quality data) that were used to designate these areas nonattainment initially.
- The classification table in 40 CFR 51.903 (established by the Phase 1 Rule) is used for the classifications. The classification table of 40 CFR 51.903 provides a maximum attainment date based on a number of years after the effective date of the nonattainment designation (e.g., 3 years for Marginal; 6 years for Moderate). For all areas other than Denver,[4] the effective date of nonattainment designation and classification for the 8-hour standard was June 15, 2004. Thus, other than Denver, Marginal nonattainment areas had a maximum statutory attainment date of June 15, 2007. Since the Marginal area attainment date of June 15, 2007 has passed, any area that would have been initially classified as Marginal, and that did not attain by June 15, 2007 (based on 2004–6 data), and was unable to attain pursuant to the 1-year attainment date extensions allowed under section 181(a)(5)(B) and 40 CFR 51.907, is reclassified from Marginal to Moderate under this rule.
- CAA section 181(a)(4) applies to all areas affected by this final rule. This provision allows the Administrator in her discretion to adjust the classification—within 90 days after the initial classification—to a higher or lower classification ''* * * if the design value were 5 percent greater or 5 percent less than the level on *which* such classification was based.'' The process for making these adjustments is described at 69 FR 23863 *et seq.* (April 30, 2004). However, the EPA will not grant a request for reclassification to a lower classification if (1) the attainment date for that lower classification has passed, and (2) the area is or has violated the standard such that it would not qualify for the first and second 1-year attainment date extensions. Since the Marginal attainment date has passed, no area initially classified Moderate by this notice will be eligible for a downward adjustment to Marginal. Further, since none of the initial Moderate areas affected by this notice had a classification design value within 5 percent of the Serious threshold of 0.107 ppm, no areas are eligible for an upward classification adjustment to Serious.
- Areas originally placed under subpart 1 that have already been redesignated to attainment are not affected by these classification provisions, which apply only to areas that remain designated nonattainment for the 1997 ozone standard.

In this rulemaking, the EPA is responding to the Court's vacatur of the provision that placed certain nonattainment areas solely under subpart 1 and is now classifying those areas under subpart 2. There are sixteen such areas identified in Table 2 that are being initially classified under subpart 2 based on the area's design value at the time of designation. To determine the area's design value, we used 2001–2003 ambient air quality data. We then took the following steps to determine whether any areas classified Marginal should be immediately reclassified to Moderate.

Step 1. If the area would be classified as Marginal based on its design value at the time of designation, we determined if the area attained by the June 15, 2007 attainment date based on 2004–2006 ambient air quality data. If so (and if the area has not been formally redesignated

[4] Denver's special circumstancs as a former EAC area were discussed in the proposal. (74 FR 2939–2941). The nonattainment designation for the Denver area became effective November 20, 2007. (72 FR 53952 and 53953, September 21, 2007).

to attainment)[5] the area remains classified as Marginal. There are 8 areas classified Marginal as a result of this Step. (*See* Table 2 column for ''Status in 2007'', which identifies 8 Marginal areas as ''Attaining''.)

Step 2. If the Marginal area did not attain by the June 15, 2007 attainment date, we determined if the area would be eligible for the first 1-year extension under CAA section 181(a)(5) and 40 CFR 51.907.[6] If the area would not have been eligible for the first 1-year extension, we are reclassifying Amador and Calaveras Counties (Central Mountain), CA to Moderate as a result of this Step.

Step 3. For any Marginal area that was eligible for the first 1-year extension, we reviewed the ambient air quality data from 2005–2007 to determine if the area attained the standard by the end of the first 1-year extension. If so, we are classifying the area as Marginal. No areas are classified Marginal as a result of this Step.

Step 4. For any Marginal area that was eligible for the first 1-year extension, but did not attain by the end of that extension, we then determined if it would have been eligible for the second 1-year extension.[7] If the area would not have been eligible for the second 1-year extension, we are reclassifying the area to Moderate. Mariposa and Tuolumne Counties (Southern Mountain), CA are reclassified to Moderate as a result of this Step.

Step 5. For any Marginal area that was eligible for the second 1-year extension, we then reviewed the ambient air quality data from 2006–2008 to determine if the area attained the standard. If so, we are classifying the area as Marginal. If the area did not attain, we are reclassifying the area as Moderate. No areas are classified Marginal or reclassified Moderate as a result of this Step.

Any Moderate area that did not attain by June 15, 2010 and would not have been eligible for the first or second 1-year extension, would be subject to the CAA's statutory provisions for reclassification (bump-up) to Serious, the next higher classification category. At the time the January 16, 2009 proposed rule was issued, the Moderate area attainment date of June 15, 2010, had not passed. Thus, the proposed rule did not address reclassification from Moderate to Serious. The EPA will address reclassifications from Moderate to Serious, as necessary, in separate rulemaking action.

Table 2 identifies the final subpart 2 classification for each area that was originally classified under subpart 1 pursuant to our Phase 1 Rule (69 FR 23989, April 30, 2004), and that remains nonattainment for the 1997 ozone standard.

TABLE 2—SUMMARY OF NONATTAINMENT AREAS INITIALLY CLASSIFIED UNDER SUBPART 1 RECEIVING RECLASSIFICATION UNDER SUBPART 2

State	Area	2004 Initial classification/ design value 2001–2003 (ppm)	Status in 2007 (based on 2004–2006 data) (ppm)	Current subpart 2 classification
CA	Chico, CA	Marginal (0.089)	Attaining (0.084)	Marginal
CA	Sutter Co. (Sutter Buttes), CA	Marginal (0.088)	Attaining (0.081)	Marginal
NV	Las Vegas, NV	Marginal (0.086)	Attaining (0.083)	Marginal [d] [e]
AZ	Phoenix-Mesa, AZ	Marginal (0.087)	Attaining (0.083)	Marginal [e]
CO	Denver-Boulder-Greeley-Ft Collins-Loveland, CO.	Marginal [a] (0.087)	Attaining [a] (0.082)	Marginal
NY	Albany-Schenectady-Troy, NY	Marginal (0.087)	Attaining (0.078)	Marginal [d]
NY	Rochester, NY	Marginal (0.088)	Attaining (0.074)	Marginal [d]
NY	Essex Co. (Whiteface Mtn), NY	Marginal (0.091)	Attaining (0.071)	Marginal [d]
CA	Amador and Calaveras Counties (Central Mtn), CA.	Marginal (0.091)	Not attaining (0.093) [b]	Moderate
CA	Mariposa and Tuolumne Counties (Southern Mtn), CA.	Marginal (0.091)	Not attaining (0.086) [c]	Moderate
NY	Buffalo-Niagara Falls, NY	Moderate (0.099)	n/a	Moderate [d]
PA	Pittsburgh-Beaver Valley, PA	Moderate (0.094)	n/a	Moderate [d]
NY	Jamestown, NY	Moderate (0.094)	n/a	Moderate [d]
CA	Kern Co. (Eastern Kern), CA	Moderate (0.098)	n/a	Moderate
CA	Nevada Co. (Western Part), CA	Moderate (0.098)	n/a	Moderate
CA	San Diego, CA	Moderate (0.093)	n/a	Moderate

Notes:

[a] Denver was identified as an Early Action Compact (EAC) area at the time of designation in 2004 and the effective date of its nonattainment designation was deferred pending the EAC process. The EAC program was later terminated and the nonattainment designation for the area became effective on November 20, 2007, based on a 2001–2003 design value of 0.087 ppm placing it in the Marginal classification. The Denver area attained the standard by its attainment date of November 20, 2010 (3 years after the date the area was designated nonattainment) and continues to attain based on 2008–10 data.

[b] Amador and Calaveras Counties did not attain by the attainment date and were not eligible for the first 1-year extension based on 2006 4th highest daily 8-hour average of 0.098 ppm. Thus, the area's classification was changed to Moderate. The area now attains the standard based on 2008–10 data.

[c] Mariposa and Tuolumne Counties did not attain by the attainment date and were eligible for the first 1-year extension based on 2006 4th highest daily 8-hour average of 0.084 ppm. The area was not eligible for the second 1-year extension based on the average of the original attainment year (2006) and first extension year (2007) 4th highest daily 8-hour average of 0.085 ppm. Thus, the area's classification was changed to Moderate. The area now attains the standard based on 2008–10 data.

[d] Albany-Schenectady-Troy, Rochester, Essex County, Buffalo, Pittsburgh, Jamestown, and Las Vegas have received Clean Data Determinations.

[5] Section 107(d)(3) of the CAA allows states to request nonattainment areas to be redesignated to attainment provided certain criteria are met that include an approved SIP, a determination that air quality improvement is due to permanent and enforceable reductions in emissions, an approved maintenance plan, and other section 110 and part D requirements.

[6] Under 40 CFR 51.907, an area would be eligible for the first 1-year extension of its attainment date for the 1997 ozone standard if the 4th highest daily maximum 8-hour average in 2006 is equal to or less than 0.084 ppm.

[7] Under 40 CFR 50.907, an area is eligible for the second 1-year extension if the 2-year average of 4th highest daily maximum 8-hour averages for 2006 and 2007 at the monitor with the highest level is equal to or less than 0.084 ppm.

[e] Las Vegas and Phoenix have requested redesignation to attainment.

Subpart 2 contains SIP requirements that differ from subpart 1. These include different attainment deadlines, different RFP requirements, requirements to adopt RACT-based controls for certain categories of NO_X and VOC sources, specific major source thresholds and NSR offset ratio requirements for each classification. Table 3 lists new subpart 2-related SIP requirements for Marginal and Moderate nonattainment areas. The EPA is aware that many of the subpart 2 SIP requirements have already been satisfied through previous SIP submissions or the requirements have been suspended due to a Clean Data Determination. For example, all of the areas that would be affected by the Moderate area vehicle inspection and maintenance (I/M) program requirement are already implementing approved programs, and the three areas in the Ozone Transport Region (Pittsburgh, PA; Jamestown, NY; and Buffalo-Niagara, NY) have already submitted SIPs to address the VOC and NO_X RACT requirements. Similarly some areas affected by this rulemaking were previously nonattainment under the 1-hour ozone standards, and may have already established an emissions statement rule and completed RACT determinations. Also, 7 of the 16 areas affected by this final rule have received Clean Data Determinations that suspend certain planning requirements.[8]

As indicated in Table 3, attainment demonstrations and RFP plans are suspended by a Clean Data Determination, while the remaining requirements are not. However, it is longstanding EPA policy that if an area submits a complete request for redesignation including a maintenance plan before certain nonattainment area requirements become due, those elements do not need to be submitted in order for the area to be redesignated to attainment.[9]

TABLE 3—ADDITIONAL SIP ELEMENTS ASSOCIATED WITH SUBPART 2 FOR PREVIOUS SUBPART 1 8-HOUR OZONE NONATTAINMENT AREAS

[This table is not inclusive of all CAA requirements]

Ozone subpart 2 SIP requirement (CAA section)	Marginal areas	Moderate areas	Is requirement suspended by clean data determination?
Attainment demonstration including RACM (§ 182(b)(1))	Not Required	Required	Yes.
Reasonable Further Progress (§ 182(b)(1))	Not Required	Required	Yes.
Periodic Emissions Inventory (§ 182(a)(3)(A))	Required	Required	No.
Emissions Statement Rule (§ 182(a)(3)(B))	Required	Required	No.
Subpart 2 RACT for VOCs and NO_X (§ 182(b)(2)(f))	Not Required	Required	No.
Pre-1990 RACT fix-up (§ 182(a)(2)(A))	Required	Not Required	No.
New Source Review (§ 182(a)(2)(C), (a)(4), (b)(5))	Required	Required	No.
Vehicle I/M (§ 182(a)(2)(B), (b)(4))	Not Required	Required[+]	No.

[+] Applies only in nonattainment areas with population >200,000 based on 1990 census. (*See* 74 FR 41818–22, August 19, 2009.)

With respect to transportation conformity, current transportation plan and transportation improvement program conformity determinations for the 1997 8-hour ozone standard remain valid, and are not impacted by this action. Areas formerly classified under subpart 1 were already required to satisfy the applicable CAA section 176(c) conformity requirements for the 1997 8-hour ozone standard based on their designation as nonattainment. Thus, no new conformity deadline is triggered in these areas based on their classification under subpart 2. These areas would make future conformity determinations according to the applicable requirements of 40 CFR 93.109(d) and (e). Any new Moderate areas that are using interim emissions tests will be required to meet additional test requirements that do not apply to Marginal areas (40 CFR 93.119(b)(1)).[10] Also, areas newly classified under subpart 2 that are using budget test 40 CFR 93.118 and whose attainment year is within the timeframe of the transportation conformity determination and transportation plan must analyze the attainment year as required by 40 CFR 93.118(d)(2).

3. Comments and Responses

a. Classification of Former Subpart 1 Areas

Comment: A number of commenters opposed placing all the former subpart 1 areas under subpart 2. Most of these commenters expressed concern that the subpart 2 requirements for local emission controls would be too burdensome for some of the areas, are obsolete, and would not necessarily be effective in bringing down ozone levels. In the case of Cincinnati, two state air agency commenters argued that the requirements would produce absurd results because the area had recently dropped the vehicle I/M program in the wake of meeting the 1-hour ozone

[8] The seven areas that have received Clean Data Determinations are Pittsburgh-Beaver Valley, PA, 76 FR 31237–39, May 31, 2011; Buffalo-Niagara Falls, Jamestown, NY and Essex County (Whiteface Mountain), 74 FR 63993, December 7, 2009; Albany-Schenectady-Troy, NY, Rochester, NY, 73 FR 15672, March 25, 2008; and Clark County (Las Vegas), NV, 76 FR 17343, March 29, 2011.

[9] EPA guidance with respect to redesignations to attainment can be found in a memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992. *See http://www.epa.gov/ttn/oarpg/t5/memoranda/redesignmem090492.pdf.* This memorandum notes, for example, that, for the purposes of redesignation, a state must meet the applicable requirements of section 110 and Part D that become due prior to the state's submittal of a complete redesignation request to EPA. For the purposes of evaluating a redesignation request, the EPA will not need to consider the required SIP elements that became due after submittal of the redesignation request. However, such requirements remain due until EPA completes final action approving a redesignation request.

[10] Moderate ozone nonattainment areas are required to satisfy both interim emissions tests in order to demonstrate conformity. Therefore, they must demonstrate that emissions in the build scenario are less than the no-build scenario and that emissions in the build scenario are less than emissions in the 2002 base year. (40 CFR 93.119(b)(1)).

standard. Some commenters also argued that certain areas would benefit more from regional controls than from local controls. In addition, some of the affected areas have already made significant progress toward attainment since they were originally designated nonattainment. Another commenter stated that the proposal would take away flexibility that they believe the CAA allows and that the Court had preserved in its ruling by allowing areas with design values below 0.09 ppm to be classified under subpart 1. Two commenters supported placing all the former subpart 1 areas under subpart 2.

Response: In *South Coast,* the Court determined that although the CAA does not mandate that 8-hour ozone nonattainment areas with a design value below 0.09 ppm be placed under subpart 2, the EPA had not identified a reasonable basis for placing any of the 1997 standard ozone nonattainment areas under subpart 1. As noted in the proposed rule, the EPA was unable to develop a reasonable basis for doing so and, despite soliciting comments on potential rationales, none of the commenters on the proposed rule identified any such rationale. Therefore, at this time, the EPA is not placing any 1997 standard nonattainment areas solely under subpart 1.

We disagree with the commenters that suggest that the subpart 2 requirements associated with the 1997 NAAQS would not necessarily be effective in bringing down ozone levels. Even if the mandated programs under subpart 2 are not the most effective programs to achieve emission reductions in a specific area, that does not render the programs ''absurd,'' as the programs will provide benefits by reducing emissions of VOC and NO_X. We also note that the areas being placed under subpart 2 through this rulemaking have been designated nonattainment for the 1997 ozone standard for over 7 years. Some of those areas have attained the 1997 standard and have had an opportunity to seek redesignation to attainment before the mandatory subpart 2 requirements apply. With regard to those that are still not attaining the 1997 standard, we note that the subpart 1 flexibility that has been available to these areas to date has not resulted in attainment for these areas. Thus, it is difficult to argue for these areas that the additional flexibility under subpart 1 is more likely to result in attainment than the mandated programs under subpart 2.

Comment: Some of the commenters that opposed placing all the former subpart 1 areas under subpart 2 believed that the EPA did not provide sufficient reason for not considering a different threshold for placing areas under subpart 1. They noted that the Court in *South Coast* had set forth the 0.09 ppm 8-hour average as a design value to be used, such that areas with design values below that value could be placed in subpart 1. One commenter recommended that the EPA maximize the use of subpart 1 to the extent it could. However, on this matter, several environmental organizations commented that the Court in *South Coast* expressly rejected all of the EPA's previously stated rationales for placing some areas only under subpart 1. They also commented that the EPA has not identified any alternative rationales to justify such an approach, and allege that no lawful or non-arbitrary rationales exist.

Response: Although the Court determined that an 8-hour design value of 0.09 ppm is the appropriate threshold for determining which areas must be placed under subpart 2 and which areas the Agency has discretion to place under subpart 1, the Court rejected the EPA's rationale in the Phase 1 Rule for placing areas under subpart 1. At the time of proposal, the EPA noted that it had not developed any rationale for placing areas in subpart 1 for the 1997 8-hour ozone standard and expressly solicited comment on potential rationales. However, no commenters presented a rationale that differed from that which the Court rejected in *South Coast.*

Comment: One state air agency supported the proposal to not place under subpart 2 those former subpart 1 areas that have already been redesignated attainment.

Response: As noted in the proposal, because the classification provisions apply to areas designated nonattainment, the final rule does not classify those former subpart 1 areas that have been redesignated to attainment for the 1997 ozone NAAQS.

b. Timing of SIP Submission Under Subpart 2 Classification

Comment: A number of commenters argued that the proposal did not give enough time for states to submit SIPs under the new classification. Some argued that the period of 1 year after the effective date of this rule for classifying areas was unreasonable and arbitrary, and that more time was needed for analysis and the rule adoption process, including public hearing. Some commenters argued that the EPA should allow the statutory time period in CAA section 181(b)(1) from the date of classification (3 years). Several commenters noted that even if a state had prepared a SIP under subpart 1 requirements, a subpart 2 Moderate area SIP requires much more time and effort due to the number of mandatory measures that would have to be adopted.

Response: As noted in the proposal, subpart 1 areas originally had an obligation to submit a SIP under section 172(c), including an attainment demonstration, within 3 years after the June 2004 designations. Although the Court vacated the EPA's placement of areas under subpart 1, the decision did not change the requirement that areas designated nonattainment must attain as expeditiously as practicable. Moreover, we note that areas that would have been subject only to subpart 1 if the EPA's rule had not been vacated would have had an attainment date of June 2009, 1 year earlier than the attainment date for the Moderate classification. While the Court decision did create some uncertainty regarding the specific classification that might eventually apply to an area, we note that areas have been on notice since the EPA's January 2009 proposal that it is likely they would be classified under subpart 2. As noted in the proposal, the EPA had advised states with areas that had been placed under subpart 1, including all of the areas affected by this final rule, to continue making progress toward attainment for these areas.[11] Indeed we are aware that many of these states have been working to adopt and implement measures necessary for the affected areas to attain the 1997 ozone standard, and the EPA believes 1 year is an appropriate amount of additional time to complete that work.

For those areas that are still violating the 1997 8-hour ozone standard, it is critical for them to move forward and achieve the emission reductions needed to ensure timely attainment.

Comment: One state agency commenter recommended that the effective date of the new classifications be 1 year after the rule is issued; if the area attains before the effective date, the rule would be waived for that area.

Response: The CAA requires that areas be classified ''at the time of designation by operation of law.'' The effective date of designation for the 1997 ozone standard was June 15, 2004. While we do not believe it is appropriate to treat the classifications as

[11] Memorandum of March 19, 2007 from William L. Wehrum to EPA Regional Administrators, re: ''Impacts of the Court Decision on the Phase 1 Ozone Implementation Rule'' (response to Question 2) and memorandum of June 15, 2007, from Robert J. Meyers to Regional Administrators, re: ''Decision of the U.S. Court of Appeals for the District of Columbia Circuit on our Petition for Rehearing of the Phase 1 Rule to Implement the 8-Hour Ozone NAAQS'' (Implications for Subpart 1 Areas).

''retroactive,'' such that they would be considered effective over 5 years ago, we also do not believe there is a legal basis for deferring the effective date of the classification for 1 year. Moreover, as noted above, if the Court had not vacated our placement of areas only under subpart 1, the areas affected by this rule would have had an attainment date (June 2009) that is 1 year earlier than the attainment date (June 2010) they would receive if classified as Moderate under this rule. Thus, even if the EPA had a legal basis and discretion to delay the effective date of the classification, and thus delay the planning and attainment obligations, we do not believe in this instance that it would be reasonable to do so.

c. Timing of Attainment Date

Comment: A number of commenters argued that the proposal did not provide newly classified Marginal and Moderate areas sufficient time to attain and that they should have maximum attainment dates of 3 and 6 years (respectively) from the effective date of the new classifications, not the original nonattainment designations in 2004. Several commenters cited the EPA's interpretation of the CAA's attainment date in the Phase 1 Rule for support by referring to section 181(b)(1) that provides that where an area designated attainment or unclassifiable is subsequently redesignated to nonattainment, the area shall be classified under Table 1 of section 181 and shall be subject to the same requirements applicable if it had been classified at the time of notice under section 107(d)(3), ''except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of enactment of the CAA Amendments of 1990 and the date the area is classified under this paragraph.'' The commenters note that while by its terms section 181(b)(1) would not expressly apply to reclassification of a nonattainment area, the section indicates that retroactive application of time requirements is not favored. The commenters note that regarding the proposed rule, the EPA would be classifying areas in 2009, not in 2004, and argue that deadlines should be calculated from 2009, not from 2004. They also argue that even if the EPA believes the deadlines need to be adjusted in some way to address this unique situation, the calculation and adjustment should be done from 2009 after an assessment of the situation as it exists in 2009. The commenters also argue that the EPA seems to be doing exactly what the U.S. Supreme Court warned against in *Whitman* when the Court rejected the idea of mechanically applying subpart 2's method for calculating attainment dates, which is simply to count forward a certain number of years from the effective date of the 1990 CAA amendments. They point out that the Court observed that simplistically using the subpart 2 scheme ''depending on how far out of attainment the area started—seems to make no sense for areas that are first classified under a new standard after November 14, 1990. If for example, areas were classified in the year 2000, many of the deadlines would largely have expired at the time of classification.''

Response: For the reasons articulated in previous responses, we do not believe that it is legally supportable to start the attainment periods from the time of classification pursuant to this rule, nor do we believe that such an approach is reasonable. The primary trigger for planning for attainment of a NAAQS is the designation as nonattainment for that standard. As noted previously, regardless of whether an area is subject only to subpart 1, or is classified as Marginal or higher under subpart 2, the obligation is the same—to attain as expeditiously as practicable. Thus, there is no legal or policy basis to delink the attainment obligation from the time of designation and instead link it to the time of classification. We disagree that this situation is analogous to the situation where an area is newly designated nonattainment and for which section 181(b)(1) provides that any submission dates tied to the date of enactment of the CAA Amendments be extended to account for the time of designation. In such a case, the key is that the area is newly *designated* as nonattainment—not that the area's classification status has changed or been clarified. All of the areas that will receive a subpart 2 classification pursuant to this rule have been designated nonattainment since June 2004 (except for the Denver area, which was designated nonattainment effective November 20, 2007) and thus should be well on their way toward planning for attainment of the 1997 ozone standard as expeditiously as practicable. To the extent that those efforts have been delayed, we see no legal basis or justification to provide additional time.

Comment: One state air agency commenter argued that the 5 percent reclassification provision of the CAA would be rendered meaningless by the timing in the proposal, because the attainment date for Marginal areas has already passed.

Response: We agree as a practical matter that none of the 16 areas affected by this final rule are eligible for a classification adjustment.

Comment: Several commenters argued that the Denver area should have a June 2007 attainment date for its Marginal classification and thus should be reclassified to Moderate because it did not attain by a June 2007 attainment date. They claim that the Early Action Compact (EAC) concept was unlawful. They argue that even assuming the EAC deferral was legally permissible, Denver was in fact identified as a nonattainment area in the EPA's original April 30, 2004, designations action. Moreover, they point out that the EPA agrees, ''as it must under the Act,'' that areas identified as of April 30, 2004, as violating the 1997 ozone NAAAQS (including Denver) must be classified based on their design values as of April 30, 2004. They claim that under § 181 of the Act, such classification occurred by operation of law no later than April 30, 2004. Furthermore, they claim that assigning a November 2010 Marginal area attainment date to Denver (a Marginal area) is also unreasonable and arbitrary, given that the EPA is assigning a June 2007 attainment date to all other areas classified as Marginal based on 2001–03 design values. They argue that even if the Act could be read as giving the EPA some discretion in setting the outside attainment date, the statute expressly requires the attainment date to be ''as expeditiously as practicable.'' They argue that the EPA cites no legal or rational basis, and none exists, for finding that November 2010 is ''as expeditiously as practicable'' for Denver, when every other Marginal area had a 2007 attainment date, nor is there any conceivable justification consistent with the Act and its purposes. They point out that Denver residents are not somehow less deserving of clean air than residents of the other areas, nor is there any rational basis for delaying the stronger controls in Denver that would come from the reclassification to Moderate required for all other Marginal areas that failed to attain by 2007 and were ineligible for attainment date extensions. They argue that the EPA cannot claim that it would be harder for Denver to adopt Moderate area controls than the other areas proposed for Moderate classification, as all of the other areas will have had the same amount of time to prepare and implement SIP requirements. They argue that neither is there any inequity in requiring Denver to adopt the same controls on the same schedules as required for other areas initially

classified as Marginal based on 2001–03 design values. To the contrary, they argue, allowing Denver more time than other Marginal areas not only flouts Congressional intent but is grossly inequitable to the other Marginal areas required to attain by 2007. The commenter also argues that the EPA cannot rely on the EAC deferral of the effective date of Denver's attainment designation and classification because that deferral was itself contrary to the Act. ''Nowhere does the Act allow the EPA to defer the effective dates of ozone nonattainment designations and classifications, or to otherwise delay control requirements triggered by designations. To the contrary, the Act requires nonattainment designations by date-certain deadlines. Section 107(d), 42 U.S.C. 7407(d); Pub. L. 105–178, section 6103, 112 Stat. 465 (June 9, 1998), codified at 42 U.S.C. 7407 Note. Promulgating a non-effective nonattainment designation—i.e., a paper designation that sits in the books without being activated—violates this requirement. Further, the Act contains a detailed array of requirements, likewise governed by date certain deadlines, applicable to nonattainment areas, including submission of implementation plans providing for attainment, rate-of-progress, and various specific programs such as new source review, conformity, and contingency measures. *See,* e.g., CAA sections 181, 182, 110, 172, 173, 176. By refusing to implement these various requirements, the EAC scheme violates those provisions. The Act likewise prescribes requirements governing redesignation of nonattainment areas to attainment (setting forth several prerequisites that must be met before such redesignation can be granted), CAA section 107(d)(3)(E), and requiring the EPA-approved maintenance plans sufficient to remedy any relapse into nonattainment that occurs during the 20-year period following redesignation. CAA sections 107(d)(3)(E)(iv), 175A. By shunting these requirements aside, the EPA would violate those provisions as well.''

Response: The EPA acknowledges the commenters' concerns with the EAC program. However, the EPA's rules regarding EAC areas under the 1997 ozone NAAQS were promulgated in 2004, and the proper time for challenging the legality of the EAC program and the deferral of the effective date of the nonattainment designation for Denver (and other EAC areas) was within 60 days of publication in the **Federal Register** of those final actions (40 CFR Part 81, September 21, 2007 (72 FR 53952) and April 30, 2004 (69 FR 23857)). To the extent the commenters are raising concerns about the effective date of designation for the Denver nonattainment area and the attainment date for that area, those were established in a final rule published September 21, 2007 (72 FR 53952). Thus, these comments are not timely. We note that contrary to the claims of the commenters, the Denver area's classification in this rulemaking is based on the design value that existed at the time the EPA initially published (and deferred the effective date of) the nonattainment designation [April 30, 2004 (69 FR 23858)] and was based on 2001 to 2003 data. With regard to the claims concerning the time periods for SIP submissions, we note that the time periods for attainment and SIP submissions for the Denver area are linked to the effective date of the designation and/or classification of the area, as they are for all areas. With respect to the attainment date, the Denver area, which is classified as Marginal under this rule, had an attainment date of November 2010—3 years following the effective date of designation.

Comment: One state agency commenter argued that for Moderate areas, the requirement to provide reasonable further progress toward attainment is rendered meaningless by the timing of the proposal, since there would be no time to provide progress prior to the attainment date.

Response: Given the timing of the maximum statutory attainment date (June 15, 2010) and SIP submission date (1 year after the effective date of this rulemaking) for Moderate areas, any RFP plan not already in effect will not have an effect on attainment by the attainment date since the attainment date for Moderate areas has already passed. However, under the CAA, an RFP plan (to obtain 15 percent VOC emissions reductions from baseline emissions within the first 6 years after the applicable base year) would still be a required SIP element, even though the 6-year period might end after the Moderate area attainment date, depending on the base year for the state's RFP calculation. We note that under the Clean Data Policy, codified at 40 CFR 51.918 (70 FR 71702, November 29, 2005), if the area attains the standard, a Clean Data Determination under the Clean Data Policy provision would suspend the obligation to submit the RFP SIP. The suspension would remain in place until such time as the EPA redesignates the area to attainment, at which time the requirement would no longer apply, or until EPA determines the area has violated the 1997 standard, at which time the obligation would apply once again.

d. Data Used for Classification

A number of the commenters argued that the EPA should use more recent data for the classification of the former subpart 1 areas. There were several arguments made in these comments, and we address them separately here:

Comment: Commenters claim that using the 2001–2003 data for the initial designations ignores the improvements in emissions reductions (e.g., through the NO_X SIP call) and ambient ozone reductions that have occurred since designations were made in 2004. Some commenters note that several of the areas are close to attaining the standard and would be subjected to mandatory controls that would not be necessary to attain the standard. Another commenter notes that Appendix A of the January 16, 2009 proposal shows that, with one exception, the current subpart 1 areas for which a 2005–2007 design value is available had a lower design value in those years than they did for 2001–2003, and the one exception (Las Vegas) had the same design value in both periods; thus using the earlier data would more likely subject areas to a higher classification. Another commenter notes that section 181(a) directed the EPA in 1990 to classify areas using the most recent data (i.e., data from 1990, or actually, a future time when designations would be made), not data from 6 years earlier. The commenter also notes that section 181(a) does not state that the data used to classify areas must be the data that existed at the time of designation. They argue that section 181(a) instead specifies only that the classification occur at the time of designation. They point out that classification is precisely the thing that did not lawfully occur at the time of designation in 2004, through no fault of the states. They argue that the temporal connection between classification and designation has been irretrievably broken. They argue that a second temporal connection in section 181(a), namely the connection between classification of areas and data used to classify areas, has not been broken and should be preserved by using the most recent data. They claim that doing so allows the EPA to better assess where states are now and where mandatory requirements of a higher classification are really needed to address ozone nonattainment. It avoids creating artificial deadlines based on retroactive application of time periods and classification based on a backward-looking review of data. It avoids

depriving states of the opportunity to develop strategies to attain the revised standard based upon where the state's air quality is, not was. They argue this is particularly true for areas like Columbus and Cincinnati in Ohio that have attained the 1-hour standard that was addressed by subpart 2, and already have or are close to attaining the 1997 standard. They claim that these areas do not need to be abruptly classified at the tougher Moderate classification with its mandatory emission control measures.

Response: As we noted in the proposal, the classifications would be the initial classifications for these areas for the 1997 ozone standard. We noted that CAA section 181(a) provides that ''at the time'' areas are designated for a NAAQS, they will be classified ''by operation of law'' based on the ''design value'' of the areas and in accordance with Table 1 of that section. We believe this language requires that the area be classified based on the design value that existed for the area ''at the time'' of designation. Areas were designated nonattainment in 2004, based on design values derived from data from 2001–2003.

We also note that arguments that areas should be able to develop plans to attain based on what the air quality ''is,'' not what it ''was,'' would only serve to further delay the progress that should already have been made. As noted previously, if the area had remained solely subject to subpart 1, the area would have been required to attain the 1997 standard by June 2009. Those areas that have attained and have been redesignated as of the effective date of this final rule will not be classified under subpart 2. The EPA has previously reminded states that they should remain on track with planning for attainment despite the Court's remand of the subpart 1 classification.

We also note that it would be inequitable to most areas previously classified under subpart 2 to classify a former subpart 1 area with similar air quality using current air quality data. Most of the areas classified under subpart 2 in 2004 now have cleaner air than they did in 2004 and thus, if they were being classified now based on more recent air quality data, they too would receive a lower classification.

Comment: One commenter alleged that using the 2001–2003 data for Allegan County, MI, produces an absurd result, requiring mandatory local emission controls when the problem is clearly transport from outside the state. The commenter cites the study, ''Western Michigan Ozone Study—Draft Report'' of November 2008, prepared by the Lake Michigan Air Directors Consortium (LADCO) for the EPA, to comply with a provision within the Energy Policy Act of 2005. That commenter notes that in *NRDC* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994), the D.C. Circuit Court addressed the EPA's failure to meet a November 15, 1991 deadline in the CAA for publication of guidance for states' preparation of SIPs for ''enhanced'' vehicle inspection and maintenance. Those SIPs were due by November 15, 1992. Because the EPA failed to publish the necessary guidance until nearly a year after the statutory deadline for that guidance, states could not be held to *their* deadline, and the states' SIP submissions deadline was ''properly extended to further the CAA's purposes.'' The commenter concludes that for purposes of the proposed rule, the EPA's failure in 2004 to meet its statutory obligation to classify ozone nonattainment areas lawfully, is no cause for the EPA to now use the data it would have used at that time in classifying areas, where those data would disadvantage the areas. They comment that the effect of the EPA's proposed approach on this issue is to penalize states, areas, and sources unfairly for the EPA's legally deficient action.

Response: We disagree with the commenter's suggestion that it would be an ''absurd result'' to use designation-era data for classification. As we noted previously in relation to the concept of allowing exemptions from requirements under subpart 2, the judicial precedents in which courts have allowed exceptions from the strict language of a law are fairly narrow. For instance, in the final Phase 2 Rule, we said: ''In general, we note that to demonstrate an absurd result, a State would need to demonstrate that application of the requirement would result in more harm than benefit. For example, the programs mandated under subpart 2 are generally effective in reducing emissions of the two ozone precursors—NO_X and VOC—and because reductions of those precursors generally lead to improved air quality, we believe that such a demonstration could be made, if at all, only in rare instances.'' *See* 70 FR at 71620; November 29, 2005. We do not find that the situation at issue here meets the criteria implied by judicial precedents.

We also disagree with the commenter's statement where the commenter relies upon *NRDC* v. *EPA* to argue against using the data from the time of designation. In *NRDC,* the Court faced an impossibility argument. Under the CAA, States were required to develop I/M SIPs consistent with the EPA guidance. Because the EPA was late in issuing that guidance (which it determined needed to be issued through rulemaking), States were unable to submit timely SIPs that were consistent with the guidance. There is no impossibility argument here. The data from 2001–2003 exist and can be used to classify areas. To the extent that SIP submission dates for these areas have passed, the EPA is providing additional time for submission of those plans. To the extent that a Marginal area affected by this rule did not attain the standard by the June 15, 2007, attainment date (or the extended deadline), the EPA is reclassifying the area to Moderate.[12] Furthermore, we note that the subpart 2 classifications based on 2001–2003 data are not ''punishment'' for the EPA's failure to classify areas correctly in the initial Phase 1 Rule. Using the 2001–2003 data places the areas in the position they would have been in if the EPA had initially classified all areas under subpart 2 in the initial Phase 1 Rule.

Comment: Another commenter notes that 40 CFR Part 50, Appendix I states: ''the 3-year average annual fourth-highest maximum 8-hour average ozone concentration is also the air quality design value for the site.'' The appendix states in section 2.2 that ''The 3-year average shall be computed using the *three most recent,* consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix.'' The commenter notes that the definition of ''design value'' in the CFR requires that the three most recent years be used to calculate it.

Response: We disagree with commenters that rely on 40 CFR Appendix I to argue that there is only one ''design value'' for an area and that it is based on the most recent 3 years of data. We agree that the current design value for an area is based on the most recent 3 years of data, but that does not mean design values for previous 3-year periods of time are no longer relevant. As explained previously, we believe that the language in section 181(a) of the

[12] We do not agree with arguments that we should allow for a Marginal area classification with an attainment date in the future. As noted in several places, Marginal areas are presumed capable of attaining quickly without the adoption of additional local controls. For that reason, there are virtually no mandated local control requirements for Marginal areas under section 182(a), nor is there a requirement to develop an attainment demonstration. Thus, to the extent an area would have been classified as Marginal based on its 2001–2003 design value yet failed to attain by June 2007, we see no argument that such areas would have attained if EPA had ''correctly'' classified them as Marginal in 2004. (We note that many of the areas originally identified as subpart 1 have indeed attained and been redesignated as attainment.)

Act provides that classifications be based on the design value used for designation.

Comment: Another commenter claims that ignoring current air quality data is out of step with the EPA's new emphasis on science-based decisions.

Response: The EPA is not ignoring current air quality data, but must classify areas based on the law as described above.

Comment: Environmental organization commenters argue that the EPA should use the air quality data available at the time of designation for initial classification.

Response: The EPA agrees for the reasons stated in the proposed rule and above in response to comments.

e. Other Comments on Classification of Former Subpart 1 Areas

Comment: One state air agency commented that the proposed rule does not adequately address situations like Allegan County, MI, which is largely affected by transport but yet is not provided any relief under the CAA such as coverage under the rural transport area provision of section 182(h).

Response: We agree that the CAA does not provide relief in the form of being identified as a ''rural transport area'' for areas such as Allegan County, MI, whose nonattainment area boundary is adjacent to a metropolitan statistical area. Part of the EPA's rationale in the Phase 1 Rule for using subpart 1 was to address situations such as that with Allegan County. However, the court in *South Coast* found that Congress intended to constrain such discretion. The commenter has not suggested any specific relief available under the CAA that the EPA could have applied in this final rule.

B. Anti-Backsliding Under Revoked 1-Hour Ozone Standard—In General

1. Proposal

The EPA codified anti-backsliding provisions governing the transition from the revoked 1-hour ozone NAAQS to the 1997 8-hour ozone NAAQS in 40 CFR 51.905(a). These provisions, as promulgated, retained most of the 1-hour ozone requirements as ''applicable requirements'' [defined in 40 CFR 51.900(f)]. A requirement listed as an ''applicable requirement'' is retained for an area if the requirement applied in the area based on the area's 1-hour ozone designation and classification as of the effective date of its 8-hour designation (for most areas, June 15, 2004). 40 CFR 51.900(f).

Section 51.905(b) provides that an area remains subject to the 1-hour standard obligations defined as ''applicable requirements'' until the area attains the 8-hour NAAQS. Furthermore, § 51.905(b) provides that such obligations cannot be removed from a SIP, even if the area is redesignated to attainment for the 8-hour NAAQS, but must remain in the SIP as applicable requirements or as contingency measures, as appropriate.

Section 51.905(e), as promulgated in 2004, indicated that certain 1-hour standard requirements would no longer apply after revocation of the 1-hour standard. Among other things, these included 1-hour NSR, section 185 penalty fees for the 1-hour NAAQS, and 1-hour contingency measures for failure to attain or make reasonable progress toward attainment of the 1-hour NAAQS.[13] The Court vacated these exemption provisions, and in the January 16, 2009, proposed rule, the EPA proposed to delete these three vacated provisions from the *Code of Federal Regulations*.[14]

2. Final Rule

This final rule addresses how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS. The final rule removes three vacated provisions of the Phase 1 Rule that provided exemptions from the anti-backsliding requirements relating to nonattainment NSR, CAA section 185 penalty fees, and contingency measures as these requirements applied for the 1-hour standard. This rule also reinstates 1-hour contingency measures as applicable requirements that must be retained until the area attains the 1997 ozone standard. The EPA has issued separate guidance[15] and a separate proposed rule addressing the now-applicable 1-hour requirements for NSR (75 FR 51960, August 24, 2010). The EPA will also address reinstatement of the section 185 fee program obligations in separate action.

3. Comments and Responses

Comment: One group of environmental organizations supported the proposal to remove the three exemptions from the regulations, but stated that NSR and the section 185 fee requirement must be added to the list of ''applicable requirements'' at 40 CFR 51,900(f). Several commenters expressed other concerns about the implications of removing the 1-hour NSR and section 185 fee program exemptions.

Response: In this final rule, the EPA is only removing the regulatory language at 40 CFR 50.9(c) that provided for the exemptions from 1-hour NAAQS requirements in accordance with the court vacatur. The EPA has addressed in a separate proposed rulemaking exactly how the regulatory provisions should address the now-applicable 1-hour NSR requirements (75 FR 51960, August 24, 2010), and plans to address application of section 185 fee program requirements for the 1-hour standard in separate actions.

Comment: A state agency commented that the Court never addressed the requirements that should still apply to prevent backsliding in areas that had already achieved timely attainment of the 1-hour ozone standard and only focused on whether NSR was a required control for the purposes of CAA section 172(e) anti-backsliding provisions for areas not attaining the 1-hour standard (such as South Coast Air Basin).

The commenter stated that section 51.905(e)(4), which states that upon revocation of the 1-hour ozone NAAQS, a 1-hour nonattainment area's implementation plans must meet requirements contained in paragraphs (e)(4)(ii) through (e)(4)(iv) of this section, should not be deleted. Instead, this section should be retained and supplemented with further language to appropriately address the circumstances of 1-hour standard nonattainment areas

[13] Note that if the area is nonattainment for the 1997 8-hour standard, for purposes of the 1997 standard, it is subject to nonattainment NSR, contingency measures and (if classified as Severe or Extreme for the 1997 ozone NAAQS) the section 185 penalty fee provision.

[14] We noted in the proposal that the Court's June 2007 clarification, *South Coast,* 489 F3d 1245, confirms that the December 2006 decision was not intended to establish a requirement that areas continue to demonstrate conformity under the 1-hour ozone standard for anti-backsliding purposes. Therefore, no revisions were proposed to 40 CFR 51.905(e)(3). Section 40 CFR 51.905(e)(3) establishes that conformity determinations for the 1-hour standard are not required beginning 1 year after the effective date of the revocation of the 1-hour standard and any state conformity provisions in an applicable SIP that require 1-hour ozone conformity determinations are no longer federally enforceable. This provision does not require revision in light of the Court's decision and clarification, because the Court did not require conformity determinations for the 1-hour standard, and existing regulations already implement the Court's holding that 8-hour ozone nonattainment and maintenance areas must use 1-hour ozone budgets to determine conformity to the 1997 8-hour standard until such time as 8-hour ozone budgets are approved or found adequate for the area. Therefore, current transportation conformity-related regulations set forth in 40 CFR part 93 and 40 CFR 51.905(e)(3), and the general conformity regulations in 40 CFR part 93 are consistent with the Court's decision and clarification on the Phase 1 Rule and do not require revision.

[15] Robert J. Meyers Memorandum, October 3, 2007, New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia Circuit on the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS).

that attained the 1-hour standard. For example, the further language could specify that section 51.905(e)(4) is not applicable in the circumstances that were present with the South Coast Air Basin. Alternatively, the further language could specify that section 51.905(e)(4) is applicable only in certain circumstances, including those that were present for the Greater Chicago Ozone Nonattainment Area, which attained the 1-hour standard prior to the November 2007 Severe area deadline.

Response: In *South Coast,* the Court vacated the regulatory provision that did not retain the obligation for States to have 1-hour major NSR requirements as part of their approved SIPs. The Court held that removing such provisions from a SIP ''would constitute impermissible backsliding.'' 472 F.3d 882 (2006), clarified, 489 F.3d 1245 (DC Cir. 2007), cert. denied, 76 U.S.L.W. 3095 (U.S. Jan. 14, 2008).

In this final rule, we are removing the vacated provision that did not retain 1-hour NSR obligations from the regulations at 40 CFR part 51 in order to ensure the published regulatory text is consistent with the Court's vacatur. The *South Coast* decision means that states remain obligated to have in their SIPs the 1-hour major NSR thresholds and offsets in those 8-hour nonattainment areas that had not been redesignated to attainment for the 1-hour ozone NAAQS as of the date of designation for the 1997 8-hour ozone NAAQS. The Phase 1 Rule (69 FR 23972) established the date of the designation for the 1997 8-hour ozone NAAQS (June 15, 2004 for most areas) as the relevant date for determining what anti-backsliding requirements would apply to areas (i.e., the requirements that applied based on the area's 1-hour designation and classification as of the effective date of designation for the 8-hour standard). In a separate rulemaking, we plan to address the circumstances in which 1-hour NSR requirements might be removed from a SIP, specifically addressing areas that currently attain the 1-hour standard such as Chicago.

We disagree with the commenter that the Court's decision only addressed the specific circumstances applicable to the South Coast Air Quality Management District (SCAQMD). While SCAQMD, as the ''lead petitioner,'' lent its name to the case, the challenges to the rule were broad and concerned the anti-backsliding requirements as they applied to all types of areas. Furthermore, we note that the anti-backsliding rules applied in the same manner in the Chicago area as they did in SCAQMD. Under the rules, the requirements that were retained for an area were those that applied as of the effective date of designation for the 1997 8-hour NAAQS. Both the Chicago area and the SCAQMD were designated nonattainment for the 1-hour standard at the time of designation for the 8-hour standard and were designated nonattainment for the 8-hour standard. Thus, both areas were subject to the anti-backsliding provisions in 40 CFR 51.905(a)(1) that address requirements for ''8-Hour NAAQS Nonattainment/1-Hour NAAQS Nonattainment.'' Furthermore, the provisions in 40 CFR 51.905(e) that did not retain certain 1-hour requirements applied in the same manner to both areas. Thus, to the extent the *South Coast* decision addresses these regulatory provisions, it applies in the same manner to both areas.

Comment: One commenter maintained that we should ensure and confirm that the proposed rules do not have retroactive effect. Speaking in terms of NSR, the commenter said any changes to the 8-hour ozone implementation rule that impose additional or new requirements on designated areas should not be effective until after the implementation rule is adopted and any necessary SIP revision is adopted and approved on a timely basis. To support their comment, they referenced *Sierra Club* v. *Whitman,* 285 F.3d 63 (DC Cir. 2002). They also commented that the Administrative Procedure Act severely restricts retroactive rulemaking and Congress did not take the unusual step of giving U.S. EPA the ability to implement rules retroactively. The requirement that 1-hour NSR continues to apply to 8-hour nonattainment areas that attain the 1-hour NAAQS will not be officially adopted until mid-2009, at the earliest. Hence, for all units that commence construction (e.g., contract commitments are in place or building has begun) between 2004 and 2009, in areas re-designated as attaining the 1-hour NAAQS, 1-hour NSR has not applied. They asserted the *South Coast* court could not have intended the retroactive application of the requirement. Further the commenter maintained that retroactive application of this rule to sources that have already committed contracts is contrary to fairness and predictability in regulatory environments.

Response: In this final rule, we are removing from the regulations at 40 CFR part 51 the provision that did not retain 1-hour NSR obligations in order to ensure the published regulatory text is consistent with the Court's vacatur. We view the portions of the Court's decision on the anti-backsliding provisions as self-implementing; thus, at a minimum, as of the date of the Court's mandate (August 29, 2007), areas that were designated nonattainment for the 1-hour standard as of the effective date of designation as nonattainment for the 1997 8-hour standard, have been obligated to adopt and implement an NSR program consistent with their 1-hour classification as of the effective date of designation for the 1997 ozone standard. We note that we have urged states to take steps to comply with the decision without waiting for further EPA rulemaking. *See e.g.,* Memorandum from Robert Meyers to Regional Administrators (October 3, 2007). The necessary actions to achieve such compliance may vary depending on the specific situation.

Because this rule merely removes the vacated regulatory text, it has no ''retroactive effect'' as suggested by the commenter. As noted above, at a minimum, as of the date the mandate issued, areas designated nonattainment for the 1997 8-hour standard have been obligated to ensure that their SIP includes a 1-hour NSR program consistent with their classification for the 1-hour standard as of the effective date of designation for the 1997 ozone standard and to implement such program. Thus, for any permitting actions that have occurred since the issuance of the Court's mandate, we do not believe there is any argument that the requirement to meet 1-hour NSR obligations is ''retroactive.''

To the extent the commenter raises the issue of retroactivity, the issue is relevant only to the extent to which the Court's vacatur has retroactive effect. In some instances, a vacated regulation has been held to be ''void ab initio''; in other words, the regulation is treated as if it had never existed. *See, e.g., United States* v. *Goodner Bros. Aircraft, Inc.,* 966 F.2d 380 (8th Cir. 1992). In addition, the D.C. Circuit has held that there is a presumption of retroactivity for adjudications when such adjudications clarify existing law, and that the presumption is departed from only when to do otherwise would lead to manifest injustice. *Qwest Services Corp.* v. *F.C.C.,* 509 F.3d 531 (D.C. Cir. 2007). The D.C. Circuit has stated that vacatur has ''the effect of restoring the status quo ante.'' *Air Transport Association of Canada* v. *FAA,* 254 F.3d 271, 277 (D.C. Cir. 2001). The EPA will work with states and sources to resolve any issues arising from permitting actions taken between June 15, 2004 and

August 29, 2007,[16] based on a permit program that was consistent with the waiver in 40 CFR 51.905(e)(4).

C. Contingency Measures

1. Proposed Rule

The Court in *South Coast Air Quality Management District, et al.,* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied 489 F.3d 1245, vacated 40 CFR 51.905(e)(2)(iii), which did not retain the anti-backsliding requirement concerning contingency measures, on the basis that they were control measures that must continue to apply. Therefore, the EPA proposed that states be required to retain 1-hour contingency measures in their SIPs that apply based on a failure to meet 1-hour RFP milestones or upon a failure to attain the 1-hour standard by the area's attainment date. Furthermore, consistent with the EPA's proposal to retain these 1-hour contingency measure requirements as anti-backsliding measures, we also proposed to add ''contingency measures under sections 172(c)(9) and 182(c)(9) of the CAA'' to the list of applicable requirements under § 51.900(f). The proposal noted that in situations where an area attains the 1-hour NAAQS by the applicable attainment date for that standard, the area is not subject to the requirement to implement contingency measures for failure to attain the standard by its attainment date. As a result, any area that has met its attainment deadline for the 1-hour standard (or meets its deadline if it has not yet passed), would not be required to implement the contingency measures for failure to attain the standard by its attainment date for purposes of anti-backsliding even if the area subsequently lapses into nonattainment. Additionally, the contingency measures for failure to meet RFP milestones would not be triggered if the area has met those milestones.

The proposal also noted that in situations where a 1-hour ozone nonattainment area is in attainment of that standard based on current air quality, the EPA can make a finding of attainment. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard,'' dated May 10, 1995. Under this policy, which is referred to as the ''Clean Data Policy,'' if the EPA determines through rulemaking that the area is meeting the 1-hour ozone standard, the requirements for the state to submit an attainment demonstration and related components such as contingency measures for failure to attain or make reasonable further progress are suspended as long as the area continues to attain the 1-hour ozone NAAQS. (We note that such a determination does not relieve an area of the requirement to comply with a contingency measure provision in an approved SIP, but merely suspends any outstanding submission requirement.) If the area subsequently violates the ozone NAAQS for which the determination was made (in this example, the 1-hour ozone NAAQS), the EPA would initiate notice-and-comment rulemaking to withdraw the determination of attainment, which would reinstate the requirement for the state to submit such plans.

The proposal noted that three federal courts of appeal have upheld the EPA rulemakings applying the Clean Data Policy. *See Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion. Since the proposal, the U.S. Court of Appeals for the District of Columbia Circuit has also upheld the Clean Data Policy, which was codified in 40 CFR 51.918 for purposes of implementing the 1997 ozone NAAQS, in *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009).

Thus if the EPA makes a determination of attainment of the 1-hour ozone standard as provided by the Clean Data Policy, the EPA would find that the requirement under the anti-backsliding provisions (40 CFR 51.905) to submit any outstanding section 172 and 182 contingency measures under the 1-hour standard would be suspended for so long as the area continues to attain the 1-hour standard.

2. Final Rule

The final rule takes the same approach as proposed, namely, that areas designated nonattainment for the 1997 8-hour ozone NAAQS must adopt, if not already adopted, and retain in their SIPs, contingency measures for failure to meet 1-hour RFP milestones and for failure to attain the 1-hour standard by the area's attainment date. This requirement applies where an area remained designated nonattainment for the 1-hour standard at the time of the area's designation to nonattainment for the 1997 8-hour ozone standard. To clarify that this requirement continues to apply, we are including ''contingency measures under sections 172(c)(9) and 182(c)(9) of the CAA'' in the section 51.900(f) list of ''applicable requirements.'' Consistent with 40 CFR 51.905(b), areas remain obligated to adopt and retain these requirements in their SIPs until they attain and are redesignated for the 1997 8-hour ozone NAAQS. The rule at § 51.905(b) provides that an 8-hour nonattainment area will remain subject to the applicable requirements listed in § 51.900(f) until it attains the 8-hour standard and that after an area attains the 8-hour standard, the state may request that the 1-hour obligations be shifted to contingency measures, but may not remove them completely from the SIP.[17] In addition, if prior to attaining the 1997 8-hour ozone standard, the area attains the 1-hour standard, the EPA may make a determination of attainment for the 1-hour standard which would suspend the obligation to submit such contingency measures if the state has not already done so.

3. Comments and Responses

Comment: One environmental organization commenter recommended that contingency measures for the 8-hour standard should be at least as stringent as those for the 1-hour standard.

Response: The proposal addresses the contingency measure requirement as it relates to anti-backsliding for the 1-hour standard, which was vacated by the Court. It does not interpret the contingency measure obligations for the 8-hour standard. Because states have discretion in selecting the measures to adopt as contingency measures, concerns regarding the adequacy of contingency measures are best addressed in the context of a specific SIP rulemaking.

Comment: Several commenters noted that the preamble to the proposed rule describes two situations in which states would no longer need to retain or implement 1-hour contingency measures: (1) Where a nonattainment area meets or has met its 1-hour attainment date, even if the area

[16] That is, between the effective date of the initial area designations for the 1997 8-hour standard and the date of the final D.C. Circuit Court ruling on rehearing of the *South Coast* case.

[17] The preamble to the Phase 1 Rule clarified that, ''it is appropriate to maintain these mandated controls to remain as part of the implemented SIP until an area attains the 8-hour NAAQS and is redesignated to attainment.'' (69 FR 23983). This accompanying preamble text clarifies that an area must not only attain, but also must be redesignated to attainment prior to shifting any ''applicable requirements'' to contingency measures. (69 FR 23982–83). This is further supported by the portion of § 51.905(b) that provides for the shifting of the 1-hour anti-backsliding measures to contingency measures. Such a shift can occur only in the context of an approved section 175A maintenance plan.

subsequently lapses into nonattainment; and (2) where—whether before or after its 1-hour attainment date—a nonattainment area has 1-hour attainment air quality and the EPA makes a finding of 1-hour attainment pursuant to the Clean Data Policy that has been in effect since 1995. They recommended that the EPA reaffirm these principles in its final action in this rulemaking.

Response: The EPA reaffirms the position stated in the proposal that contingency measures for failure to attain would not be triggered where an area attains the 1-hour standard by its attainment date, even if the area subsequently lapses into nonattainment. However, the commenter misinterprets the scope of the Clean Data Policy. Clean Data Determinations under the Clean Data Policy only suspend the requirement to submit certain outstanding planning requirements (such as contingency measures that would be triggered by a failure to attain by the applicable attainment date). In addition, the obligation to submit such a SIP is suspended only for so long as the area remains in attainment. If the area is redesignated to attainment, the obligation to make such submission would no longer apply. Furthermore, when an area is redesignated to attainment, it may also move adopted contingency measures linked to a failure to attain to the contingency measure portion of the maintenance plan. To the extent contingency measures have been adopted and approved into the SIP, a Clean Data Determination under the Clean Data Policy does not authorize the state to remove them from the SIP. Nor does a Clean Data Determination affect the requirement that areas comply with SIP-approved measures, such as contingency measures. Thus, if an area fails to attain by its attainment date and contingency measures approved into the SIP are triggered by that failure, a Clean Data Determination that is issued subsequently would not suspend the obligation to implement the contingency measures consistent with terms of the approved SIP.

Comment: One state agency commenter supported removing the vacated provision of the regulations that provided that states need not retain 1-hour standard contingency measures for failure to attain or make reasonable further progress toward attaining the 1-hour standard.

Response: The EPA has removed the vacated provision from the regulatory text.

Comment: One state agency commenter supported use of the Clean Data Policy for the 1-hour standard but does not agree with the portion of the policy that would require states to meet any planning requirements stayed pursuant to the policy if there is a subsequent violation of a revoked standard.

Response: We note first that the proposed rule did not set forth any proposal concerning the Clean Data Policy, but merely described a situation in which the Clean Data Policy might be applied. As noted in the Clean Data Policy and the regulation codifying that policy for purposes of the 1997 8-hour ozone standard, a determination of attainment suspends the obligation to submit certain planning requirements for only so long as the area continues to attain the standard. We note that redesignation of the area to attainment for the 1997 8-hour standard would relieve the area permanently of the obligation to submit such planning SIPs.

D. Section 185 Fee Program for 1-Hour NAAQS

1. Proposal

The EPA proposed to remove the language relating to the vacated provisions of the Phase 1 Rule that did not retain the requirement for areas that were classified as Severe or Extreme for the 1-hour standard at the time of designation for the 1997 8-hour standard to include in their SIP a CAA section 185 penalty fee program for the 1-hour standard (i.e., 40 CFR 51.905(e)(2)(ii)). In *South Coast,* the Court vacated this exemption provision.

2. Final Rule

We are removing the language in 40 CFR 51.905(e)(2)(ii) that did not retain the requirement for areas that were classified as Severe or Extreme for the 1-hour standard at the time of designation for the 1997 8-hour standard to include a CAA section 185 penalty fee program for the 1-hour standard in their SIP.

3. Comments and Responses

Comment: Several commenters expressed support for not defining the 1-hour section 185 fee provision as an ''applicable requirement'', as promulgated in § 51.905(e), and indicated that the fees should only apply until an area attains the 1-hour standard.

Response: The EPA believes that not defining the section 185 fee provision as an ''applicable requirement'' is in conflict with the ruling of the Court. Nevertheless, in this rulemaking, the only issue the EPA is addressing regarding the applicability of section 185 requirements is the removal of the regulatory provision that was vacated by the Court in *South Coast.* Exactly how the EPA plans to address this applicable anti-backsliding requirement for section 185 fee programs will be addressed in separate action.

Comment: Several commenters oppose the requirement to have 3 years of attaining air quality data under the Clean Data Policy in order to suspend section 185 fees temporarily. They believe fees should be suspended for any year with data indicating compliance with the 1-hour standard. They believe requiring a 3-year period of attainment is a more appropriate criterion for permanent cessation of the 1-hour section 185 fees.

Response: In this rulemaking, the only issue the EPA is addressing regarding the section 185 requirements is the removal of the regulatory provision that was vacated by the Court in *South Coast.* The EPA plans to address anti-backsliding requirements for section 185 fee programs in separate action.

E. Deletion of Obsolete 1-Hour Ozone Standard Provision

1. Proposal

The EPA proposed to delete 40 CFR 50.9(c) because it is obsolete. In the proposal the EPA explained that when we promulgated the 8-hour ozone standard on July 18, 1997 (62 FR 38856), we also revised 40 CFR 50.9 to provide that the 1-hour ozone standard would be revoked for an area once the EPA determined that the area had air quality meeting the 1-hour standard. Subsequently, because the pending litigation over the 1997 8-hour NAAQS created uncertainty regarding the 8-hour NAAQS and associated implementation requirements, we revised 40 CFR 50.9 to place two limitations on our authority to apply the revocation rule: (1) The 1997 8-hour NAAQS must no longer be subject to legal challenge, and (2) it must be fully enforceable.[18] (65 FR 45182, July 20, 2000). These limitations were codified as § 50.9(c). In the final Phase 1 Rule, we again revised § 50.9, this time to revise § 50.9(b) to provide for revocation of the 1-hour standard 1 year after designation of areas for the 1997 8-hour ozone standard. However, according to our proposal, in promulgating the Phase 1 rule, we neglected to remove paragraph (c) which was no longer necessary since the

[18] In addition, in June 2003, we stayed our authority to apply the revocation rule pending our reconsideration in the implementation rule for the 1997 NAAQS of the basis for revocation. (68 FR 38160, June 26, 2003). We completed that reconsideration in the Phase 1 Rule, which was published in the **Federal Register** of April 30, 2004. (69 FR 23951).

8-hour standard is no longer subject to legal challenge and the standard has been upheld and is enforceable. *American Trucking Assoc.* v. *EPA,* 283 F.3d 355. (D.C. Cir. 2002) (resolving all remaining legal challenges to the 8-hour ozone standard and upholding the EPA's rule establishing that standard.)

2. Final Rule

In reviewing the regulatory text in light of one of the comments received on the proposal, we realized that we incorrectly described the obsolete regulatory text in 50.9(c). The language described in the proposal, which stayed the EPA's authority to revoke the 1-hour ozone standard while the 8-hour standard remained subject to legal challenge, was language that was actually removed in the Phase 1 Rule (69 FR 23951, Apr. 30, 2004). That language was added to the second sentence of 50.9(b) at the time that the status of the 1997 8-hour standard remained uncertain because of the ongoing litigation challenging that standard and our ability to enforce it. (65 FR 45200, July 20, 2000.) Because the litigation challenging the 1997 standard and our ability to enforce that standard was fully resolved, we deleted that regulatory language in the Phase 1 Rule.

However, in June 2003, consistent with a settlement agreement in a lawsuit challenging the revocation provision we had promulgated simultaneous with the 1997 ozone standard, we separately stayed our authority to revoke the 1-hour ozone standard. (68 FR 38163, June 26, 2003). Specifically, we added 40 CFR 50.9(c), which provides that our authority to revoke the 1-hour ozone standard is stayed until ''EPA issues a final rule revising or reinstating'' the revocation authority and considers and addresses certain issues in that rulemaking process. We considered and addressed those issues in the rulemaking for implementing the 1997 ozone standard and as part of the final Phase 1 Rule. We revised and reinstated our authority to revoke the 1-hour standard. (68 FR 32818–19, June 2, 2003; 69 FR 23969–71, April 30, 2004). However, we neglected at that time to remove 40 CFR 50.9(c), which became obsolete upon the issuance of the Phase 1 Rule.

Despite the confusion created by our incorrect description in the proposed rule, we are deleting 40 CFR 50.9(c). As provided above, the provision is obsolete because the future rulemaking it refers to is the Phase 1 Rule, which was promulgated in April 2004. Although we incorrectly described the provision in the proposal, we correctly indicated that the provision was obsolete and thus we are deleting it in this final action as proposed.

3. Comments and Responses

Comment: One commenter expressed concern about the background statements and explanation regarding the removal of 40 CFR 50.9(c). The commenter claims there is an incorrect citation in the preamble. In the Background discussion at 74 FR 2938, col 2, paragraph B, the proposal said, referring to the two limitations we placed on our authority to apply the revocation rule, that ''These limitations were codified as § 50.9(c).''

Response: As provided above, we recognize that the explanation in the proposal was confusing because we described regulatory text that was removed from 40 CFR 50.9(b) at the time we promulgated the Phase 1 Rule, rather than describing the regulatory text we planned to delete, which is provided in 40 CFR 50.9(c). However, as explained above, the regulatory text in 50.9(c) is obsolete as noted in the proposal and thus we are moving forward to remove it from the CFR as proposed.

Comment: One environmental commenter expressed concern about confusing language in 40 CFR 50.9(b) and recommended that the second sentence of that provision be removed.

Response: Paragraph (b) of § 50.9 states that the 1-hour standards set forth in the section will remain applicable to all areas notwithstanding the promulgation of 8-hour ozone standards under § 50.10. The 1-hour NAAQS set forth in paragraph (a) of the section will no longer apply to an area one year after the effective date of the designation of that area for the 8-hour ozone NAAQS pursuant to section 107 of the Clean Air Act. Area designations and classifications with respect to the 1-hour standards are codified in 40 CFR part 81.

The commenter does not specify why the sentence is confusing and we disagree that it is. Rather, that sentence is the operative sentence for revoking the 1-hour standard. Pursuant to this sentence of the regulation, the 1-hour standard was revoked for most areas on June 15, 2005, the date 1 year after their effective date of designation for the 1997 8-hour standard. For 13 EAC [19] areas with a deferred effective date of designation, the 1-hour standard was revoked April 15, 2009, the date 1 year following their effective date of designation as attainment for the 1997 NAAQS. For the Denver EAC area, which was designated nonattainment for the 1997 NAAQS effective November 20, 2007, the 1-hour standard was revoked November 20, 2008. We believe that it is important to retain this sentence because it specifies the time at which the 1-hour standard, identified in 40 CFR 51.9(a), no longer applied to areas.

F. Other Comments

Comment: Several commenters advised that this rulemaking addressing the 1997 ozone standard should be integrated with planning to address the 2008 ozone NAAQS. Several commenters recommended that addressing the 1997 standard should not result in additional paperwork beyond what is needed for the 2008 standard. One commenter recommended that the EPA rulemaking focus on implementation of the 2008 ozone NAAQS and deal with implementation deficiencies of the 1997 standard within the context of implementing the 2008 NAAQS. One local air agency commenter argued that reclassification of subpart 1 areas should not be a priority concern when viewed against other more important priorities, such as implementation of the 2008 ozone NAAQS.

Response: The Court in *South Coast* vacated portions of the Phase 1 Rule that addressed certain anti-backsliding provisions for the 1-hour standard and the portion of the rule that classified certain 1997 8-hour standard nonattainment areas under subpart 1. We plan to address the transition from the 1997 standard to the 2008 standard in separate rulemaking.

Comment: One commenter noted that there are several provisions of subpart X that continue to refer to subpart 1 even though the EPA has now proposed to classify all nonattainment areas for the 1997 ozone standard under subpart 2. These include §§ 51.908(b), 51.910(b), 51.912(c) and the portions of § 51.915 that are subject to § 51.902(b). The commenter suggests that these provisions may be extraneous if there are no areas covered under subpart 1.

Response: As an initial matter, we note that the general implementation requirements in subpart 1 also apply to areas classified under subpart 2; thus, we cannot automatically conclude that the provisions referred to by the commenter are extraneous. We choose to err on the side of retaining provisions that may not apply to any areas rather

[19] Early Action Compacts (EAC) allowed states to pledge to meet the 1997 8-hour ozone standard earlier than required. State seeking an EAC must meet a number of criteria and must agree to meet certain milestones. The most significant milestone was that the EAC areas had to be in attainment by December 31, 2007, based on air quality data from 2005, 2006, and 2007.

than to remove them in this final rule without notice and an opportunity for comment.

Comment: One environmental organization commenter indicated support for the proposal only if the rule could be interpreted as requiring Marginal areas to meet the CAA reasonably available control measures (RACM) requirement. The commenter noted that the Denver area was a former EAC area that failed to attain and was subsequently designated nonattainment. Under the proposed rule, Denver would be classified as Marginal. The commenter pointed out that the table in the proposal that summarized CAA requirements applicable under both subparts 1 and 2 indicates that RACM (under subpart 1) applies to subpart 2 areas also and thus should apply to Marginal areas.

Response: It is true that the RACM requirement, which is contained in subpart 1, applies to areas classified under subpart 2. However, the EPA has interpreted the RACM requirement for many years in the context of the requirement to demonstrate attainment as expeditiously as practicable and subpart 2 specifically exempts Marginal areas from the requirement to submit an attainment demonstration. In light of that exemption, the EPA has historically not required Marginal areas to meet the RACM test required of Moderate and higher classified areas. However, we note that under our EAC regulations, we required EAC areas that were subsequently designated nonattainment (like Denver) to submit an attainment demonstration within 1 year of the effective date of designation. 40 CFR 81.300(e)(3)(ii)(D). Therefore, the RACM requirements currently apply to the Denver nonattainment area.

Comment: One state air agency commenter recommended that the EPA should approve requests for redesignation to attainment for the 1-hour ozone standard.

Response: Because the EPA revoked the 1-hour ozone standard, the EPA indicated in the Phase 1 Rule that we were no longer obligated to redesignate areas to attainment or nonattainment for the 1-hour standard because once that standard was revoked it was no longer effective in an area. *See* 40 CFR 51.905(e). We are not reconsidering that issue as a part of this rulemaking.

Comment: Several environmental commenters alleged that there were incorrect statements in the discussion of conformity in the anti-backsliding portion of the proposal. In one comment, the commenter says:

> On page 2940, column 1 of the proposal, the EPA states: ''Areas that would be reclassified under subpart 2 are already satisfying the applicable CAA section 176(c) conformity requirements for the 1997 8-hour ozone standard.'' The EPA offers no evidence and analysis to support this claim, which goes far beyond the scope of the rulemaking proposal. It is neither necessary nor appropriate for the EPA to make a blanket statement that areas that would be reclassified are already in fact satisfying applicable conformity requirements. What the EPA can say is that areas that would be reclassified under subpart 2 are already required to satisfy applicable section 176(c) conformity requirements for the 8-hour standard.

In another comment they say:

> The EPA is also incorrect in stating (at 2941 n.18) that 40 C.F.R. § 51.905(e)(3) does not require revision. That rule includes language stating that ''any state conformity provisions in an applicable SIP that require 1-hour ozone conformity determinations are no longer federally enforceable.'' The DC Circuit has ruled that the EPA cannot declare conformity provisions of an approved SIP to be unenforceable. *Environmental Defense v. EPA,* 467 F.3d 1329, 1337 (D.C. 2 Cir. 2006). The approved provisions of a SIP remain enforceable until the state submits and the EPA approves their revocation. Id. Accordingly, 40 CFR § 51.905(e)(3) must be revised to delete the above-quoted clause.

Response: We agree with the first comment that the quoted sentence was worded poorly. We did not intend by that statement to make a determination that any specific area is satisfying the conformity requirements. We agree with the commenter's suggestion as to how the statement could have been better phrased.

Regarding the second statement, we disagree that 40 CFR 51.905(e)(3) requires revision. That regulatory provision states that ''[u]pon revocation of the 1-hour NAAQS for an area, conformity determinations pursuant to section 176(c) of the CAA are no longer required for the 1-hour NAAQS. At that time, any provisions of applicable SIPs that require conformity determinations in such areas for the 1-hour NAAQS will no longer be enforceable pursuant to section 176(c)(5) of the CAA.'' Since there is no 1-hour NAAQS, there is no ongoing conformity requirement for that NAAQS under section 176(c). The regulation also specifically refers to section 176(c)(5), which states that conformity determinations apply only in nonattainment and maintenance areas. Therefore, the intent of the regulations is to clarify that SIP provisions requiring conformity demonstrations for the revoked 1-hour NAAQS are essentially meaningless in light of section 176(c)(5). Of course, 1-hour ozone budgets in approved SIPs must be used to demonstrate conformity to the 8-hour ozone NAAQS if no 8-hour ozone budget exists.

Comment: Several environmental commenters allege that the Clean Data Policy is unlawful. One commenter states that for reasons explained in briefs filed in *NRDC* v. *EPA,* No. 06–1045 (D.C. Cir.) (which were incorporated by reference, and attached to the comment), the EPA is completely without authority to suspend the Act's mandates for submission and implementation of these SIP components merely because an area is meeting standards at a given point in time. They note that the Act provides no exception or waiver for submission of these SIP elements on grounds of temporary attainment. To the contrary, they note that section 175A(c) of the Act makes crystal clear that all requirements for nonattainment areas must remain in full force and effect unless and until the area is redesignated to attainment and has an approved maintenance plan. For all of these same reasons, they claim the EPA cannot suspend any Part D requirements retained pursuant to the Act's anti-backsliding provisions merely because an area is temporarily meeting either the 1-hour or 8-hour standards. They assert that the EPA's ''clean data'' policy is nothing more than an illegal attempt to circumvent the Act's redesignation provisions, section 107(d)(3)(E) and 175A(c).

Another environmental organization commenter also alleged that the EPA lacks authority to suspend controls from a SIP by finding the area is meeting the 1-hour standard. That commenter alleged that the CAA's redesignation procedures of section 107 provide a specific method that a nonattainment area must follow in order to remove controls from a SIP. They note that the CAA is silent on any alternative manner for a nonattainment area to remove controls from its SIP, besides being redesignated to a different classification. They thus claim it is clear that Congress intended the extensive redesignation process described in section 107 to be the only manner in which an area was to be permitted to remove controls from its SIP. The commenter also notes that the proposed rule ignores the statutorily-required redesignation procedures provided in section 107. The commenter further claims that even assuming the Clean Data Policy is valid as written, it cannot be used to waive fees required under section 185 of the CAA. They point out that the 1995 Seitz memorandum has never even applied to waive the section 185 fees controls, only other planning requirements. Thus, the EPA would take the Seitz memorandum reasoning beyond the situations to

which it purported to apply, yet the EPA does not even acknowledge this extension, much less explain why the Seitz memo rationale can be extended to section 185 fees. The commenter further notes that the 1-hour standard is no longer the standard that the EPA deems requisite to protect public health with an adequate margin of safety. Therefore, they argue, attaining the 1-hour standard should have no bearing on whether a state may remove contingency measures from its SIP.

Response: The Clean Data Policy, first articulated by the EPA in 1995 with regard to the 1-hour ozone standard, and subsequently upheld by several Courts of Appeals, is not unlawful. The EPA's interpretation of the Clean Data Policy for the 1-hour ozone standard is the basis for its Clean Data Policy regulation for the 8-hour ozone standard, which was codified at 40 CFR 51.918 and upheld by the D.C. Circuit in *NRDC* v. *EPA* 571 F.3d 1245 (D.C. Cir. 2009).

A commenter objects to the Clean Data Policy because it is not ''a valid manner of removing controls from a SIP,'' and that it ''permits EPA to remove applicable controls from an area's SIP by merely making a 'factual finding' of attainment.'' This comment misconstrues the Clean Data Policy—it is not applied to remove any controls from the SIP. Rather, it is the EPA's interpretation that the obligation to submit certain requirements, including those for RFP and contingency measures, is suspended for so long as an area attains the standard. Once SIP provisions have been approved into the SIP, the Clean Data Policy does not operate to remove them. The same commenter contends that attainment of the 1-hour standard should have no significance because it has been ''discarded.'' Although the 1-hour standard has been revoked, the 1-hour designation and classification status of an area at the time of designation for the 8-hour standard remains the basis for determining the 1-hour ozone anti-backsliding requirements for that area. Independent of and in addition to the 1-hour standard, the EPA continues to separately implement the 8-hour ozone standard and all requirements applicable under that NAAQS. As the EPA noted in its proposal, attainment of and redesignation for the 8-hour standard also affects the anti-backsliding requirements under the 1-hour standard. 40 CFR 51.905(b) Proposal at 74 FR 2942.

The EPA's Clean Data Policy does not expressly address the suspension of the requirement that affected emissions sources submit section 185 fees. Substantive issues concerning when and how section 185 fees apply for purposes of the 1-hour standard are not addressed as part of this rulemaking action and thus we are not addressing substantive comments on such issues here.

G. A Correction to a Footnote in Proposed Rule

The January 16, 2009, proposed rule, in the discussion of contingency measures, stated, ''In situations where a 1-hour ozone nonattainment area is in attainment based on current air quality (e.g., after the area's attainment date), EPA can propose to make a finding of attainment.'' Footnote 16 followed that sentence and read as follows: ''This applies even if the area did not attain by the attainment date; however, the CAA requires EPA in these cases to make a finding of failure to attain by the attainment date and either reclassify the area or apply other requirements (such as section 185) as specified for the area's classification.'' (74 FR at 2941, 2942; January 16, 2009.) The text ''however, the CAA requires EPA in these cases to make a finding of failure to attain by the attainment date and either reclassify the area or apply other requirements (such as section 185) as specified for the area's classification'' was in error and should have been deleted. The wording would have been appropriate had the situation applied to an existing ozone standard, such as the 1997 8-hour standard. However, for the revoked 1-hour standard, EPA has adopted a regulation, that was not challenged, providing that upon revocation of the NAAQS, the EPA would no longer be obligated to make findings of failure to attain the 1-hour standard or to reclassify areas for failure to attain the 1-hour standard by the area's attainment date under the 1-hour standard. (*See* 40 CFR 51.905(e)(2)(i).) Thus, the EPA is clarifying that the portion of footnote 16 stating that the EPA remains obligated to make a finding of failure to attain the 1-hour ozone standard by an area's attainment date (under section 181(b)(2) or section 179(c)) and to reclassify the area was erroneous and in conflict with § 51.905(e)(2)(i).

IV. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal or policy issues arising out of legal mandates. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action sets forth the EPA's rule for addressing portions of the partial vacatur of the EPA's Phase 1 Rule for implementation of the 1997 8-hour ozone NAAQS. However, OMB has previously approved the information collection requirements contained in the existing Phase 1 Rule (April 30, 2004; 69 FR 23951) and the Phase 2 Rule (November 29, 2005; 70 FR 71612) regulations and has been assigned OMB Control Number 2060–0594. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice-and-comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these regulation revisions on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of these revisions to the regulations on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. The EPA is aware that the two small entities listed in Table 2, Essex County and Jamestown, NY, have either satisfied the requirements through previous SIP

revisions or certain requirements have been suspended due to receiving a Clean Data Determination.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This rule restores provisions that existed under the 1-hour ozone standard and that would have continued under the 1-hour standard had not the EPA issued a revised ozone standard. Those provisions were revoked when the EPA revoked the 1-hour standard itself. Although a court upheld the EPA's right to revoke the 1-hour standard, the court ruled that the EPA erroneously revoked several 1-hour NAAQS provisions and vacated those portion of the EPA's rule. Thus, the court's own ruling restored the former 1-hour NAAQS provisions. This rule merely sets forth a corrective regulatory mechanism for restoring the 1-hour provisions that the court had already restored. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The EPA has determined that these regulation revisions contain no regulatory requirements that may significantly or uniquely affect small governments, including tribal governments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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'' are 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.''

This action does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule restores provisions that existed under the 1-hour ozone standard and that would have continued under the 1-hour standard had not the EPA issued a revised ozone standard. Those provisions were revoked when the EPA revoked the 1-hour standard itself. Although a court upheld the EPA's right to revoke the 1-hour standard, the court ruled that the EPA erroneously revoked several 1-hour NAAQS provisions and vacated those portion of the EPA's rule. Thus, the court's own ruling restored the former 1-hour NAAQS provisions. This rule merely sets forth a corrective regulatory mechanism for restoring the 1-hour provisions that the court had already restored. Thus, Executive Order 13132 does not apply to these regulation revisions.

In the spirit of Executive Order 13121 and consistent with the EPA policy to promote communications between EPA and state and local governments, the EPA solicited comments on the proposal from state and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop a SIP under these regulatory revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply.

The EPA specifically solicited additional comment on the proposed revisions to the regulations from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to Executive Order 13045 because these rule revisions address NAAQS-related SIP obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive populations, including children. However, the EPA solicited comments on whether the proposed action would result in an adverse environmental effect that would have a disproportionate effect on children. No comments were received on this specific topic.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

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

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the

environment. The revisions to the regulations revise SIP obligations related to the ozone NAAQS, which are designed to protect all segments of the general populations. As such, they do not adversely affect the health or safety of minority or low income populations and are designed to protect and enhance the health and safety of these and other populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 13, 2012.

L. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

V. Statutory Authority

The statutory authority for this action is provided 42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1).

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Ozone.

40 CFR Part 51

Air pollution control, Intergovernmental relations, Ozone, Transportation, Nitrogen oxides, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Dated: April 27, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

§ 50.9 [Amended]

■ 2. Section 50.9 is amended by removing paragraph (c).

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart X—[Amended]

■ 4. Section 51.900 is amended by adding paragraph (f)(14) to read as follows:

§ 51.900 Definitions.

* * * * *

(f) * * *

(14) Contingency measures required under CAA sections 172(c)(9) and 182(c)(9) that would be triggered based on a failure to attain the 1-hour NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of the 1-hour NAAQS.

* * * * *

■ 5. Section 51.902 is revised to read as follows:

§ 51.902 Which classification and nonattainment area planning provisions of the CAA shall apply to areas designated nonattainment for the 1997 8-hour NAAQS?

(a) An area designated nonattainment for the 1997 8-hour NAAQS will be classified in accordance with section 181 of the CAA, as interpreted in § 51.903(a), for purposes of the 1997 8-hour NAAQS, and will be subject to the requirements of subpart 2 that apply for that classification.

(b) [Reserved].

■ 6. Section 51.905 is amended by:

■ a. Revising the section heading.

■ b. Adding a sentence to the end of paragraph (b).

■ c. Removing and reserving paragraphs (e)(2)(ii) and (e)(2)(iii).

■ d. Removing paragraph (e)(4).

The revisions and addition read as follows:

§ 51.905 How do areas transition from the 1-hour NAAQS to the 1997 8-hour NAAQS and what are the anti-backsliding provisions?

* * * * *

(b) * * * Once an area attains the 1-hour NAAQS, the section 172 and 182 contingency measures under the 1-hour NAAQS can be shifted to contingency measures for the 1997 8-hour ozone NAAQS and must remain in the SIP until the area is redesignated to attainment for the 1997 8-hour NAAQS.

* * * * *

(e) * * *

(2) * * *

(ii) [Reserved]

(iii) [Reserved]

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 7. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 8. In § 81.303, the table entitled ''Arizona—Ozone (8-Hour Standard)'' is amended by revising the entries for Phoenix-Mesa, AZ: Maricopa County (part) and Pinal County (part) to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—OZONE [8-HOUR STANDARD]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Phoenix-Mesa, AZ:				
Maricopa County (part)		Nonattainment	6/13/12	Subpart 2/Marginal.

ARIZONA—OZONE [8-HOUR STANDARD]—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
T1N, R1E (except that portion in Indian Country); T1N, R2E; T1N, R3E; T1N, R4E; T1N, R5E; T1N, R6E; T1N, R7E; T1N, R1W; T1N, R2W; T1N, R3W; T1N, R4W; T1N, R5W; T1N, R6W; T2N, R1E; T2N, R2E; T2N, R3E; T2N, R4E; T2N, R5E, T2N, R6E; T2N, R7E; T2N, R8E; T2N, R9E; T2N, R10E; T2N, R11E; T2N, R12E (except that portion in Gila County); T2N, R13E (except that portion in Gila County); T2N, R1W; T2N, R2W; T2N, R3W; T2N, R4W; T2N, R5W; T2N, R6W; T2N, R7W; T3N, R1E; T3N, R2E; T3N, R3E; T3N, R4E; T3N, R5E; T3N, R6E; T3N, R7E; T3N, R8E; T3N, R9E; T3N, R10E (except that portion in Gila County); T3N, R11E (except that portion in Gila County); T3N, R12E (except that portion in Gila County); T3N, R1W; T3N, R2W; T3N, R3W; T3N, R4W; T3N, R5W; T3N, R6W; T4N, R1E; T4N, R2E; T4N, R3E; T4N, R4E; T4N, R5E; T4N, R6E; T4N, R7E; T4N, R8E; T4N, R9E; T4N, R10E (except that portion in Gila County); T4N, R11E (except that portion in Gila County); T4N, R12E (except that portion in Gila County); T4N, R1W; T4N, R2W; T4N, R3W; T4N, R4W; T4N, R5W; T4N, R6W; T5N, R1E; T5N, R2E; T5N, R3E; T5N, R4E; T5N, R5E; T5N, R6E; T5N, R7E; T5N, R8E; T5N, R9E (except that portion in Gila County); T5N, R10E (except that portion in Gila County); T5N, R1W; T5N, R2W; T5N, R3W; T5N, R4W; T5N, R5W; T6N, R1E (except that portion in Yavapai County); T6N, R2E; T6N, R3E; T6N, R4E; T6N, R5E; T6N, R6E; T6N, R7E; T6N, R8E; T6N, R9E (except that portion in Gila County); T6N, R10E (except that portion in Gila County); T6N, R1W (except that portion in Yavapai County); T6N, R2W; T6N, R3W; T6N, R4W T6N, R5W T7N, R1E (except that portion in Yavapai County); T7N, R2E; (except that portion in Yavapai County); T7N, R3E; T7N, R4E; T7N, R5E; T7N, R6E; T7N, R7E; T7N, R8E; T7N, R9E (except that portion in Gila County); T7N, R1W (except that portion in Yavapai County); T7N, R2W (except that portion in Yavapai County); T8N, R2E (except that portion in Yavapai County); T8N, R3E (except that portion in Yavapai County); T8N, R4E (except that portion in Yavapai County); T8N, R5E (except that portion in Yavapai County); T8N, R6E (except that portion in Yavapai County); T8N, R7E (except that portion in Yavapai County); T8N, R8E (except that portion in Yavapai and Gila Counties); T8N, R9E (except that portion in Yavapai and Gila Counties); T1S, R1E (except that portion in Indian Country); T1S, R2E (except that portion in Pinal County and in Indian Country); T1S, R3E; T1S, R4E; T1S, R5E; T1S, R6E; T1S, R7E; T1S, R1W; T1S, R2W; T1S, R3W; T1S, R4W; T1S, R5W; T1S, R6W; T2S, R1E (except that portion in Indian Country); T2S, R5E; T2S, R6E; T2S, R7E; T2S, R1W; T2S, R2W; T2S, R3W; T2S, R4W; T2S, R5W; T3S, R1E; T3S, R1W; T3S, R2W; T3S, R3W; T3S, R4W; T3S, R5W; T4S, 1E; T4S, R1W; T4S, R2W; T4S, R3W; T4S, R4W; T4S, R5W.				
Pinal County (part)	.....	Nonattainment	6/13/12	Subpart 2/Marginal.
Apache Junction: T1N, R8E; T1S, R8E (Sections 1 through 12)				

* * * * * * *

[a] Includes Indian Country located in each county or area, except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

■ 9. In § 81.305, the table entitled ''California—Ozone (8-Hour Standard)'' is amended by revising the entries for the following:

■ a. Amador and Calaveras Cos (Central Mtn), CA
■ b. Chico, CA
■ c. Kern Co. (Eastern Kern), CA
■ d. Mariposa and Tuolumne Cos. (Southern Mtn), CA
■ e. San Diego, CA
■ f. Sutter Co. (part), CA
■ g. Nevada Co. (Western Part), CA

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE [8-HOUR STANDARD]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Amador and Calaveras Cos., CA: (Central Mountain Cos.)				
Amador County	.....	Nonattainment	6/13/12	Subpart 2/Moderate.
Calaveras County	.....	Nonattainment	6/13/12	Subpart 2/Moderate.
Chico, CA:				
Butte County	.....	Nonattainment	6/13/12	Subpart 2/Marginal.
Kern County (Eastern Kern), CA	.....	Nonattainment	6/13/12	Subpart 2/Moderate.
Kern County (part)				

CALIFORNIA—OZONE [8-HOUR STANDARD]—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
* * *	*	*	*	*
Mariposa and Tuolumne Cos., CA:				
(Southern Mountain Counties)				
Mariposa County		Nonattainment	6/13/12	Subpart 2/Moderate.
Tuolumne County		Nonattainment	6/13/12	Subpart 2/Moderate.
San Diego, CA		Nonattainment	6/13/12	Subpart 2/Moderate.
San Diego County (part)				
That portion of San Diego County that excludes the areas listed below: La Posta Areas #1 and #2 [b], Cuyapaipe Area [b], Manzanita Area [b], Campo Areas #1 and #2.[b]				
* * *	*	*	*	*
Sutter County (part), CA:		Nonattainment	6/13/12	Subpart 2/Original.
Sutter County (part).				
(Sutter Buttes) That portion of the Sutter Buttes mountain range at or above 2,000 feet in elevation.				
* * *	*	*	*	*
Nevada County (Western part), CA		Nonattainment	6/13/12	Subpart 2/Moderate.
Nevada County (part)				
That portion of Nevada County, which lies west of a line, described as follows: beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.				

CALIFORNIA—OZONE [8-HOUR STANDARD]—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise noted.
[b] The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled ''Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS,'' dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion in this table is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes in this table does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

■ 10. In § 81.306, the table entitled ''Colorado—Ozone (8-Hour Standard)'' is amended by revising the entry for Denver-Boulder-Greeley-Ft. Collins-Loveland, CO as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—OZONE [8-HOUR STANDARD]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO:				
Adams County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Arapahoe County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Boulder County (includes part of Rocky Mtn. Nat. Park)	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Broomfield County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Denver County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Douglas County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Jefferson County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
Larimer County (part)	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
(includes part of Rocky Mtn. Nat. Park). That portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary.				
Weld County (part)	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.				
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until November 20, 2007.

* * * * *

■ 11. In § 81.329, the table entitled ''Nevada—Ozone (8-Hour Standard)'' is amended by revising the entry for Las Vegas, NV as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—OZONE [8-HOUR STANDARD]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Las Vegas, NV:				
Clark County	[2]	Nonattainment	6/13/12	Subpart 2/Marginal.
That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218 but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation.[b]				
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise noted.
[b] The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny or withdraw Federal recognition of any of the Tribes listed or not listed.
[1] This date is June 15, 2004, unless otherwise noted.
[2] The effective date is September 13, 2004.

* * * * *

■ 12. In § 81.333, the table entitled ''New York—Ozone (8-Hour Standard)'' is amended by revising the entries for the following:

■ a. Albany-Schenectady-Troy, NY
■ b. Buffalo-Niagara Falls, NY
■ c. Essex County (Whiteface Mtn.), NY—Essex County (Part)
■ d. Jamestown, NY
■ e. Rochester, NY

§ 81.333 New York.

* * * * *

NEW YORK—OZONE [8-HOUR STANDARD]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Albany-Schenectady-Troy, NY:				
Albany County		Nonattainment	6/13/12	Subpart 2/Marginal.
Greene County		Nonattainment	6/13/12	Subpart 2/Marginal.
Montgomery County		Nonattainment	6/13/12	Subpart 2/Marginal.
Rensselaer County		Nonattainment	6/13/12	Subpart 2/Marginal.
Saratoga County		Nonattainment	6/13/12	Subpart 2/Marginal.
Schenectady County		Nonattainment	6/13/12	Subpart 2/Marginal.
Schoharie County		Nonattainment	6/13/12	Subpart 2/Marginal.
Buffalo-Niagara Falls, NY:				
Erie County		Nonattainment	6/13/12	Subpart 2/Moderate.
Niagara County		Nonattainment	6/13/12	Subpart 2/Moderate.
Essex County (Whiteface Mtn.), NY:				
Essex County (part).				
The portion of Whiteface Mountain above 1,900 feet in elevation in Essex County.		Nonattainment	6/13/12	Subpart 2/Marginal.
* * *	*	*	*	*
Jamestown, NY:				
Chautauqua County		Nonattainment	6/13/12	Subpart 2/Moderate.
* * *	*	*	*	*
Rochester, NY:				
Genesee County		Nonattainment	6/13/12	Subpart 2/Marginal.
Livingston County		Nonattainment	6/13/12	Subpart 2/Marginal.
Monroe County		Nonattainment	6/13/12	Subpart 2/Marginal.
Ontario County		Nonattainment	6/13/12	Subpart 2/Marginal.
Orleans County		Nonattainment	6/13/12	Subpart 2/Marginal.
Wayne County		Nonattainment	6/13/12	Subpart 2/Marginal.
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.
[2] The effective date is September 13, 2004.

* * * * *

■ 13. In § 81.339 the table entitled ''Pennsylvania—Ozone (8-Hour Standard)'' is amended by revising the entries for Pittsburgh-Beaver Valley, PA as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE [8-HOUR STANDARD]

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Pittsburgh-Beaver Valley, PA:				
Allegheny County		Nonattainment	6/13/12	Subpart 2/Moderate.
Armstrong County		Nonattainment	6/13/12	Subpart 2/Moderate.
Beaver County		Nonattainment	6/13/12	Subpart 2/Moderate.
Butler County		Nonattainment	6/13/12	Subpart 2/Moderate.
Fayette County		Nonattainment	6/13/12	Subpart 2/Moderate.
Washington County		Nonattainment	6/13/12	Subpart 2/Moderate.
Westmoreland County		Nonattainment	6/13/12	Subpart 2/Moderate.
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.
[2] The effective date is September 13, 2004.

* * * * *

[FR Doc. 2012–11232 Filed 5–11–12; 8:45 am]

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Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395 *et al.*

Electronic On-Board Recorders for Hours-of-Service Compliance; Removal of Final Rule Vacated by Court; Unsatisfactory Safety Rating; Revocation of Operating Authority Registration; Technical Amendments; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, 395, and 396

[Docket No. FMCSA–2012–0006]

RIN 2126–AB45

Electronic On-Board Recorders for Hours-of-Service Compliance; Removal of Final Rule Vacated by Court

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule rescinds the final rule published on April 5, 2010, entitled ''Electronic On-Board Recorders for Hours-of-Service Compliance'' and amended by a September 13, 2010, technical amendment. This action responds to a decision of the Court of Appeals for the Seventh Circuit that vacated the April 2010 final rule.

DATES: Effective May 14, 2012.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, go to:

- Regulations.gov, *http://www.regulations.gov,* at any time and insert FMCSA–2012–0006 in the ''Keyword'' box, and then click ''Search.''
- Docket Management Facility, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC 20590. You may view the docket online by visiting the facility between 9 a.m. and 5 p.m. e.t., Monday through Friday except Federal holidays. For documents related to the April 2010 final rule, see docket number FMCSA–2004–18940.

FOR FURTHER INFORMATION CONTACT: Mr. William Varga, Office of Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 493–0349. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Legal Basis for Rulemaking

The legal basis for the April 2010 final rule is fully addressed in the rule and available at 75 FR 17209–17210. However, this final rulemaking is made necessary by the Court of Appeals for the Seventh Circuit's vacatur of the April 2010 rulemaking.

While the Administrative Procedure Act (APA) normally requires issuance of a notice of proposed rulemaking (NPRM) and an opportunity for public comment, the APA provides an exception when an agency ''for good cause finds * * * that notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Because this rule only makes changes that are necessary in light of the court's decision vacating the April 2010 rulemaking and has no substantive effect on the public, FMCSA finds that notice and opportunity for public comment is unnecessary and contrary to the public interest under the APA.

Similarly, given that the changes included in this rulemaking reflect the regulatory requirements currently in place as a result of the court's decision, FMCSA finds that the normal 30-day minimum delayed effective date following publication of a final rule under the APA does not apply. 5 U.S.C. 553(d)(3). The 30-day delay would serve no purpose other than continue the inconsistency between the regulations reflected in the CFR system and regulations actually in effect.

II. Background Information

On April 5, 2010, FMCSA published a final rule entitled ''Electronic On-Board Recorders for Hours-of-Service Compliance'' (EOBRs). See 75 FR 17208, as amended by 75 FR 55488 (September 13, 2010). Among other changes, the April 2010 final rule: (1) Prescribed new performance standards for EOBRs installed in commercial motor vehicles (CMVs) manufactured on or after June 4, 2012; (2) provided for the issuance of remedial directives to carriers that demonstrated noncompliance with Hours of Service rules at a prescribed level during the course of compliance reviews, requiring such carriers to use EOBRs for a 2-year period; (3) altered the Agency's safety fitness standard to take into account issuance of a remedial directive when determining a carrier's fitness; and (4) modified supporting document requirements and compliance review procedures for those carriers that voluntarily chose to use EOBRs. The final rule took effect on June 4, 2010.[1]

On June 3, 2010, the Owner-Operator Independent Drivers Association, Inc., filed a petition in the United States Court of Appeals for the Seventh Circuit challenging the April 2010 final rule. *Owner-Operator Indep. Drivers Ass'n* v. *Federal Motor Carrier Safety Admin.,* 656 F.3d 580 (7th Cir. 2011). The court found that FMCSA's failure to address the issue of harassment as part of the rulemaking—a factor the Agency was required to address under 49 U.S.C. 31137(a)—rendered the rulemaking arbitrary and capricious. 656 F.3d at 582, 589. Although the court's opinion focused on the remedial directive for carriers that demonstrated noncompliance with hours of service rules, the court vacated the entire rule. 656 F.3d at 584, 589.

On October 7, 2011, FMCSA announced in a **Federal Register** notice that it would not appeal the court's decision. 76 FR 62496.

III. Impact of Seventh Circuit Decision

The effect of the court's decision was to void the changes to Title 49 of the CFR that were part of the April 2010 final rule.[2] Stated otherwise, the provisions of Title 49 affected by the rulemaking were modified as a result of the court's action so as to return the regulatory text to its posture on June 3, 2010, immediately before the effective date of the rule vacated by the court.

This final rule takes the administrative steps necessary to remove language from the Code of Federal Regulations (CFR) that was added by the April 2010 final rule and to reinstate prior regulatory language, consistent with the court's decision.

IV. Statutory and Regulatory Reviews

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has determined that this action does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866, as supplemented by Executive Order 13563, or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). While the April 2010 final rule was an economically

[1] The September 13, 2010 rulemaking, referenced above, made technical changes to the April 2010 rule, including changes to the temperature range in which EOBRs must be able to operate and the connector type specified for the Universal Serial Bus interface.

[2] The court's decision did not affect carriers that voluntarily elect to use EOBRs that satisfy preexisting regulatory requirements to track compliance with Hours of Service regulations. See 49 CFR 395.15, as modified by this rulemaking. Nor did the court's decision affect carriers that agree to use electronic monitors that go beyond the minimal requirements of 49 CFR 395.15 under settlement agreements entered as part of the Agency's enforcement proceedings. The court's decision eliminated the supporting document relief adopted as part of the April 2010 final rule and reflected in 49 CFR 395.11, but it did not affect an Agency policy encouraging carriers to employ qualifying electronic mobile communication/tracking technology by reducing the type of supporting documents the carrier must maintain. See 75 FR 32984 (June 10, 2010).

significant regulatory action, as explained above, this final rule is made necessary by the court's decision vacating the April 2010 rulemaking. The rule simply codifies in Title 49 of the CFR the effect of the court's decision.

Regulatory Flexibility Act

FMCSA is not required to prepare a final regulatory flexibility analysis for this final rule under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601, *et seq.,* because the Agency has not issued an NPRM prior to this action. This final rule also complies with the President's memorandum of January 18, 2011, entitled *Regulatory Flexibility, Small Business, and Job Creation* (76 FR 3827). As addressed above, promulgation of this final rule is required as a result of the court's decision. Additionally, the rule was vacated before it took effect, so neither costs nor benefits were ever realized.

Unfunded Mandates Reform Act of 1995

FMCSA is not required to prepare an assessment under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, *et seq.,* evaluating a discretionary regulatory action because the Agency has not issued an NPRM prior to this action. Further, as addressed above, promulgation of this final rule is required as a result of the court's decision.

Paperwork Reduction Act

In the April 2010 final rule, FMCSA estimated a reduced annual burden for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* of 3,110,000 hours for FMCSA's information collection OMB Control Number 2126–0001, based on the remedial provisions of the final rule. On August 20, 2010, OMB approved FMCSA's most recent calculation of the paperwork burden of the Hours of Service rule. As a result of the court's action, FMCSA removed the reduction contemplated in the April 2010 final rule in its most recent application for an extension of this information collection. OMB approved the application on December 11, 2011.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(b) of Appendix 2. This categorical exclusion covers editorial and procedural regulations. A Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES.**

FMCSA also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it would result in no emissions increase or an increase in emissions that is clearly de minimis.

Executive Order 12372 (Intergovernmental Review of Federal Programs)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Executive Order 12630 (Constitutionally Protected Property Rights)

This final rule does not effect a taking of private property or otherwise have implications under Executive Order 12630.

Executive Order 12898 (Environmental Justice)

This final rule raises no environmental justice issues, nor is there any collective environmental impact resulting from its promulgation.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

This final rule does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13132 (Federalism)

A rulemaking has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with Executive Order 13132. This final rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping.

49 CFR Part 396

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

For the reasons discussed in the preamble, FMCSA amends 49 CFR chapter III as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

■ 2. Amend § 350.201 by revising the introductory text and removing paragraph (z) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following twenty-two conditions:

* * * * *

PART 385—SAFETY FITNESS PROCEDURES

■ 3. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 4. Amend § 385.1 by revising paragraph (a) to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of ''unsatisfactory'' from operating a CMV.

* * * * *

■ 5. Amend § 385.3 by removing the definitions of the terms ''safety fitness determination'' and ''safety rating or ratings'' and by adding a definition for the term ''safety ratings,'' in alphabetical order, to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Safety ratings. (1) *Satisfactory safety rating* means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) *Conditional safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in § 385.5 (a) through (k).

(3) *Unsatisfactory safety rating* means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in § 385.5 (a) through (k).

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FMCSA.

* * * * *

■ 6. Revise § 385.5 to read as follows:

§ 385.5 Safety fitness standard.

The Satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. For intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part, the motor carrier must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver's license standard violations (part 383),

(b) Inadequate levels of financial responsibility (part 387),

(c) The use of unqualified drivers (part 391),

(d) Improper use and driving of motor vehicles (part 392),

(e) Unsafe vehicles operating on the highways (part 393),

(f) Failure to maintain accident registers and copies of accident reports (part 390),

(g) The use of fatigued drivers (part 395),

(h) Inadequate inspection, repair, and maintenance of vehicles (part 396),

(i) Transportation of hazardous materials, driving and parking rule violations (part 397),

(j) Violation of hazardous materials regulations (parts 170 through 177), and

(k) Motor vehicle accidents and hazardous materials incidents.

■ 7. Amend § 385.9 by revising paragraph (a) to read as follows:

§ 385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

* * * * *

■ 8. Amend § 385.11 by revising the section heading to read as set forth below, and by removing paragraph (g).

§ 385.11 Notification of safety fitness determination.

* * * * *

§ 385.13 [Amended]

■ 9. Amend § 385.13 by removing paragraph (e).

■ 10. Amend § 385.15 by revising paragraph (a) to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning its proposed safety rating in accordance with § 385.15(c) or its final safety rating in accordance with § 385.11(b).

* * * * *

§ 385.17 [Amended]

■ 11. Amend § 385.17 by removing paragraphs (k) and (l).

■ 12. Amend § 385.19 by revising paragraphs (a) and (b) to read as follows:

§ 385.19 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT number or the ICCMC docket number, if any.

* * * * *

■ 13. Amend § 385.407 by revising paragraph (a) to read as follows:

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Motor carrier safety performance.* (1) The motor carrier must have a ''Satisfactory'' safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

* * * * *

Subpart J—[Removed]

■ 14. Remove and reserve subpart J to part 385, consisting of § 385.801 through § 385.819.

■ 15. Amend Appendix B to part 385 by revising paragraphs (b), (c), and (d) and section VI, paragraph (a), to read follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled ''Safety Fitness Procedures,'' which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a ''safety fitness standard'' which a motor carrier must meet to obtain a *satisfactory* safety rating.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory, conditional*, or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms to 49 CFR 385.5, Safety fitness standard, and § 385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Material Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional.*

* * * * *

VI. Conclusion

(a) The FMCSA believes this ''safety fitness rating methodology'' is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§ 385.9). This methodology has the capability to incorporate regulatory changes as they occur.

* * * * *

Appendix C to Part 385—[Removed]

■ 16. Remove Appendix C to part 385.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 17. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; and 49 CFR 1.73.

§ 395.2 [Amended]

■ 18. Amend 395.2 by removing the definitions of ''CD–RW,'' ''CMRS,'' ''802.11,'' ''Electronic on-board recording device (EOBR),'' ''Integrally synchronized,'' ''USB,'' and ''UTC.''

■ 19. Amend § 395.8 by revising paragraphs (a)(2) and (e) to read as follows:

§ 395.8 Driver's record of duty status.

(a) * * *

(2) Every driver who operates a commercial motor vehicle shall record his/her duty status by using an automatic on-board recording device that meets the requirements of § 395.15 of this part. The requirements of § 395.8 shall not apply, except paragraphs (e) and (k)(1) and (2) of this section.

* * * * *

(e) Failure to complete the record of duty activities of this section or § 395.15, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.

* * * * *

§ 395.11 [Removed and Reserved]

■ 20. Remove and reserve § 395.11.

■ 21. Amend § 395.13 by revising paragraph (b)(2) to read as set forth below and removing paragraph (b)(4).

§ 395.13 Drivers declared out of service.

* * * * *

(b) * * *

(2) No driver required to maintain a record of duty status under § 395.8 or § 395.15 of this part shall fail to have a record of duty status current on the day of examination and for the prior seven consecutive days.

* * * * *

■ 22. Amend § 395.15 by revising the heading of paragraph (a) and paragraph (a)(1) to read as follows:

§ 395.15 Automatic on-board recording devices.

(a) *Authority to use automatic on-board recording device.* (1) A motor carrier may require a driver to use an automatic on-board recording device to record the driver's hours of service in lieu of complying with the requirements of § 395.8 of this part.

* * * * *

§ 395.16 [Removed]

■ 23. Remove § 395.16.

§ 395.18 [Removed]

■ 24. Remove § 395.18.

Appendix A to Part 395—[Removed]

■ 25. Remove Appendix A to part 395.

PART 396—INSPECTION, REPAIR AND MAINTENANCE

■ 26. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

■ 27. Amend § 396.9 by revising the section heading, the heading of paragraph (c), and paragraph (c)(1) to read as follows:

§ 396.9 Inspection of motor vehicles and intermodal equipment in operation.

* * * * *

(c) Motor vehicles and intermodal equipment declared ''out-of-service.'' (1) Authorized personnel shall declare and mark ''out-of-service'' any motor vehicle or intermodal equipment which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. An ''out-of-Service Vehicle'' sticker shall be used to mark vehicles and intermodal equipment ''out-of-service.''

* * * * *

Issued on: May 1, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–11437 Filed 5–11–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 385, and 395

[Docket No. FMCSA–2012–0049]

RIN 2126–AB50

Unsatisfactory Safety Rating; Revocation of Operating Authority Registration; Technical Amendments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule repromulgates in the Code of Federal Regulations a statutory requirement that FMCSA revoke the operating authority registration of a for-hire motor carrier for failure to comply with safety fitness requirements; if the Agency determines that a motor carrier is ''Unfit'' based on its Safety Fitness Determination procedures, the Agency must revoke the carrier's operating authority registration. Unfit motor carriers are prohibited from operating in interstate commerce, and the Secretary of Transportation is required by statute to revoke their operating authority registration. This

final rule also repromulgates several technical provisions and makes non-substantive administrative changes. These changes, initially adopted as part of the April 5, 2010, final rule entitled ''Electronic On-Board Recorders for Hours-of-Service Compliance,'' are necessary because, for reasons unrelated to this final rule, the United States Court of Appeals for the Seventh Circuit invalidated the previous rule.

DATES: Effective May 14, 2012.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, go to:

• Regulations.gov, *http://www.regulations.gov,* at any time and insert FMCSA–2012–0049 in the ''Keyword'' box, and then click ''Search.''

Docket Management Facility, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC 20590. You may view the docket online by visiting the facility between 9 a.m. and 5 p.m. e.t., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William Varga, Office of Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 493–0349.

SUPPLEMENTARY INFORMATION

I. Legal Basis for Rulemaking

The legal basis for the repromulgation of 49 CFR 385.13(e) is section 4104 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144, 1716–1717 (Aug. 10, 2005), which requires the Secretary of Transportation to revoke the operating authority registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with safety fitness requirements. See 49 U.S.C. 13905(f)(1)(B) and (3). The implementing regulations for the safety fitness requirements are codified under 49 CFR Part 385. Under these requirements, motor carriers determined to be ''Unfit'' are prohibited from operating commercial motor vehicles in interstate commerce. Implementation of 49 U.S.C. 13905(f)(1)(B) and (3) has been delegated to the Administrator of FMCSA. 49 CFR 1.73(a)(5). FMCSA has no policy discretion in the implementation of this statutory mandate. See 49 U.S.C. 13905(f)(1)(B). This provision was not the focus of the Seventh Circuit Court of Appeals' August 26, 2011 vacature, nor is it related to electronic on-board records (EOBRs), which were the subject of that litigation.

The additional administrative and technical corrections described below, although not related to the use of EOBRs, are nevertheless supported by several broad grants of statutory authority that were fully addressed in the April 2010 rulemaking's Legal Basis discussion, available at 75 FR 17209—17210.

While the Administrative Procedure Act (APA) normally requires issuance of a notice of proposed rulemaking (NPRM) and an opportunity for public comment, the APA provides an exception when an agency ''for good cause finds * * * that notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The repromulgation of 49 CFR 385.13(e) conforms FMCSA's regulations with a statutory requirement for revocation of operating authority under prescribed circumstances. The APA exception is appropriate because FMCSA lacks any policy discretion in implementing this mandate. Furthermore, the additional amendments are administrative and technical changes that do not result in any substantive modifications in the CFR. For these reasons, FMCSA finds that the opportunity for notice and public comment is unnecessary and contrary to the public interest under the APA.

Similarly, FMCSA finds that the normal 30-day minimum delayed effective date following publication of a final rule under the APA does not apply. 5 U.S.C. 553(d)(3). Because the repromulgation of 49 CFR 385.13(e) simply codifies a statutory requirement that the Agency is currently required to follow, a 30-day delay would serve no purpose other than to postpone conforming the regulation with current Agency practice consistent with the statutory requirements. The additional administrative and technical changes do not result in any substantive modifications. None of the changes requires the regulated industry to prepare for implementation. For these reasons, FMCSA finds good cause as to why the normal delayed effective date under the APA is not required and the rules adopted here should become effective on the date of publication.

II. Background Information and Discussion of This Final Rule

Background Information

On April 5, 2010, FMCSA published a final rule titled ''Electronic On-Board Recorders for Hours-of-Service Compliance.'' See 75 FR 17208, as amended by 75 FR 55488 (Sept. 13, 2010).[1] As part of that rulemaking, FMCSA set forth in regulation a statutory requirement enacted in SAFETEA–LU § 4104. Subject to certain procedural provisions, FMCSA is required under this statute to revoke the operating authority registration of a motor carrier that has failed to comply with safety fitness requirements under 49 U.S.C. 31144. See 49 U.S.C. 13905(f)(1)(B) and (3). The EOBR final rule took effect on June 4, 2010.

On June 3, 2010, the Owner-Operator Independent Drivers Association, Inc., filed a petition in the United States Court of Appeals for the Seventh Circuit challenging the April 2010 final rule. The court found that FMCSA's failure to address the issue of harassment through the use of electronic monitoring devices as part of the rulemaking, as required under 49 U.S.C. 31137(a), rendered the rulemaking arbitrary and capricious. *Owner-Operator Indep. Drivers Ass'n, Inc.* v. *Federal Motor Carrier Safety Admin.,* 656 F.3d 580, 582, 589 (7th Cir. 2011). Although the court had focused on a remedial program under the rule that would have required carriers that demonstrated noncompliance with hours of service rules to install and use EOBRs, the court vacated the entire rule, including, sub silentio, the provision on revocation of operating authority registration. 656 F.3d at 584, 589. On October 7, 2011, FMCSA announced in a **Federal Register** notice that it would not appeal the court's decision. 76 FR 62496.

In a separate final rule published in today's **Federal Register**, titled Electronic On-Board Recorders for Hours-of-Service Compliance; Removal of Final Rule Vacated by Court, (see the Final Rules section of this **Federal Register**), FMCSA restores the regulatory text to its posture on June 3, 2010, immediately before the effective date of the rule the court vacated.

Discussion of This Final Rule

This final rule does two things. First, it repromulgates 49 CFR 385.13(e), codifying in the CFR the statutory requirement that FMCSA revoke the operating authority registration of a motor carrier that is prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements, subject to certain statutory procedural requirements.

Second, this final rule also repromulgates certain technical

[1] The September 13, 2010, rulemaking made technical changes to the April 2010 rule, including changes to the temperature range in which EOBRs must be able to operate and the connector type specified for the Universal Serial Bus interface.

corrections in regulatory text that were included for administrative convenience as part of the April 2010 rulemaking, but that are not related to EOBR devices. The administrative and technical corrections include: (1) In 49 CFR 350.201, correcting a reference to the number of factors listed for Basic Program Funds under the Motor Carrier Safety Assistance Program; (2) in 49 CFR 385.5, clarifying cross-references to other provisions of Title 49 of the CFR; (3) in 49 CFR 385.15(a), correcting and clarifying a cross-reference relating to administrative review; (4) in 49 CFR part 385, Appendix B, (d)2, making a grammatical correction so that the singular word ''Material'' is plural; and (5) in 49 CFR 395.8(a)(2), clarifying an internal reference to that section.

III. Statutory and Regulatory Reviews

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has determined that this action does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866, as supplemented by Executive Order 13563, or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). While the April 2010 final rule was an economically significant regulatory action, that assessment was based on the costs and benefits of requiring certain motor carriers to use EOBRs. As explained above, this final rule is strictly technical in that it repromulgates a nondiscretionary statutory requirement and includes administrative and technical corrections not related to EOBRs. However, these changes were made necessary by the court's decision vacating the entire April 2010 rule.

Regulatory Flexibility Act

FMCSA is not required to prepare a final regulatory flexibility analysis for this final rule under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601, *et seq.,* because the Agency has not issued an NPRM prior to this action. This final rule also complies with the President's memorandum of January 18, 2011, entitled *Regulatory Flexibility, Small Business, and Job Creation* (76 FR 3827). As addressed above, promulgation of this final rule is strictly technical in that it repromulgates in FMCSA regulations a nondiscretionary statutory requirement currently in place and includes administrative and technical corrections.

Unfunded Mandates Reform Act of 1995

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 this Act addresses actions that may result in the expenditure by a State, local, or tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This final rule will not result in such an expenditure.

Paperwork Reduction Act

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

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(b) of Appendix 2. This categorical exclusion covers editorial and procedural regulations. A Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES.**

FMCSA also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it would result in no emissions increase or an increase in emissions that is clearly de minimis.

Executive Order 12372 (Intergovernmental Review of Federal Programs)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Executive Order 12630 (Constitutionally Protected Property Rights)

This final rule does not effect a taking of private property or otherwise have implications under Executive Order 12630.

Executive Order 12898 (Environmental Justice)

This final rule raises no environmental justice issues nor is there any collective environmental impact resulting from its promulgation.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

This final rule does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13132 (Federalism)

A rulemaking has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with Executive Order 13132. This final rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping

For the reasons discussed in the preamble, FMCSA amends 49 CFR chapter III as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

■ 2. Amend § 350.201 by revising the introductory text to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following 25 conditions:

* * * * *

PART 385—SAFETY FITNESS PROCEDURES

■ 3. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 4. Revise § 385.5 to read as follows:

§ 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. For intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part, the motor carrier must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver's license standard violations (part 383 of this chapter),

(b) Inadequate levels of financial responsibility (part 387 of this chapter),

(c) The use of unqualified drivers (part 391 of this chapter),

(d) Improper use and driving of motor vehicles (part 392 of this chapter),

(e) Unsafe vehicles operating on the highways (part 393 of this chapter),

(f) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(g) The use of fatigued drivers (part 395 of this chapter),

(h) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

(i) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(j) Violation of hazardous materials regulations (parts 170–177 of this title), and

(k) Motor vehicle accidents and hazardous materials incidents.

■ 5. Amend § 385.13 by adding paragraph (e) to read as follows:

§ 385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

* * * * *

(e) *Revocation of operating authority.* If a proposed ''unsatisfactory'' safety rating or a proposed determination of unfitness becomes final, FMCSA will, following notice, issue an order revoking the operating authority of the owner or operator. For purposes of this section, the term ''operating authority'' means the registration required under 49 U.S.C. 13902 and § 392.9a of this subchapter. Any motor carrier that operates CMVs after revocation of its operating authority will be subject to the penalty provisions listed in 49 U.S.C. 14901.

■ 6. Amend § 385.15 by revising paragraph (a) to read as follows:

§ 385.15 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed or final safety rating in accordance with § 385.11.

* * * * *

Appendix B to Part 385—Explanation of Safety Rating Process

■ 7. Amend Appendix B to part 385 by revising paragraph (d)2 to read as follows:

* * * * *

(d) * * *

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional.*

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 8. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; and 49 CFR 1.73.

■ 9. Amend § 395.8 by revising paragraph (a)(2) to read as follows:

§ 395.8 Driver's record of duty status.

(a) * * *

(2) Every driver who operates a commercial motor vehicle shall record his/her duty status by using an automatic on-board recording device that meets the requirements of § 395.15 of this part. The requirements of this section shall not apply, except paragraphs (e) and (k)(1) and (2) of this section.

* * * * *

Issued on: May 1, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–11438 Filed 5–11–12; 8:45 am]

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Part IV

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2010–0170]

RIN 2125–AF41

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision; Final Rule

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The MUTCD is incorporated in the FHWA regulations, approved by the FHWA, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. The purpose of this final rule is to revise certain definitions and guidance relating to traffic control devices in Part 1 (General) of the MUTCD. The changes will clarify the definition of Standard statements in the MUTCD and clarify the use of engineering judgment and studies in the application of traffic control devices.

DATES: *Effective Date:* This final rule is effective June 13, 2012. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of June 13, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Eng, Office of Transportation Operations, (202) 366–8043; or Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed amendment (NPA), and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov/federal-register* and the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys.*

Executive Summary

I. Purpose of the Regulatory Action

The FHWA has the authority to prescribe standards for traffic control devices on all roads open to public travel pursuant to 23 U.S.C. 109(d), 114(a), 217, 315, and 402(a). In the 2009 edition of the MUTCD, the FHWA made clarifying revisions to the 2003 edition of the MUTCD to remove conflicting language and provide consistency in the intended use of engineering judgment and engineering studies. After issuance of the Final Rule for the 2009 MUTCD, FHWA received correspondence from several entities indicating that the clarifying revisions had the effect of removing highway agencies' flexibility to address field conditions. This was not FHWA's intention. Thus, on August 2, 2011 the FHWA published a Notice of Proposed Amendment (NPA) proposing revisions to the MUTCD to address these concerns.

II. Summary of the Major Provisions of the Regulatory Action in Question

In consideration of the comments received in response to the NPA, this Final Rule restores certain language contained in the 2003 MUTCD edition. The restoration of such language will continue FHWA's current practice under Official Interpretation 1(09)–1 (I) which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. The MUTCD, with these changes incorporated, is being designated as Revision 1 of the 2009 edition of the MUTCD.

III. Costs and Benefits

The changes in the MUTCD will provide additional clarification, guidance, and flexibility in the application of traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Although FHWA did not quantify the costs, we believe they will be minimal. One benefit of this rule is reduced expenditures for locations with identical conditions. For example, when a deviation is found to be warranted and can be justified, these locations will not have to spend funds on repetitive or duplicative engineering studies. In addition, since the rule restores language from the 2003 edition of the MUTCD, agencies would not have to expend resources to modify their existing operating procedures.

Background

On August 2, 2011, at 76 FR 46213, the FHWA published an NPA proposing revisions to the MUTCD. Interested persons were invited to submit comments to the FHWA Docket Number FHWA–2010–0170. Based on the comments received and its own experience, the FHWA is issuing this final rule and is designating the MUTCD, with these changes incorporated, as Revision 1 of the 2009 edition of the MUTCD.

The text of Revision 1 of the 2009 edition of the MUTCD, with these final rule changes incorporated, is available for inspection and copying, as prescribed in 49 CFR part 7, at the FHWA Office of Transportation Operations (HOTO–1), 1200 New Jersey Avenue SE., Washington, DC 20590. Furthermore, the text of Revision 1 of the 2009 edition of the MUTCD, with these final rule changes incorporated, is available on the FHWA's MUTCD Web site at: *http://mutcd.fhwa.dot.gov.* The original 2009 edition of the MUTCD and the 2003 edition of the MUTCD with Revisions 1 and 2 incorporated are also available on this Web site. Revision 1 of the 2009 edition of the MUTCD supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received, reviewed, and analyzed the 51 letters submitted to the docket, which contain more than 125 different comments on the proposed changes. The American Association of State Highway and Transportation Officials (AASHTO), the National Committee on Uniform Traffic Control Devices (NCUTCD), the American Public Works Association (APWA), the National Association of County Engineers (NACE), the American Traffic Safety Services Association (ATSSA), State departments of transportation (DOTs), city and county government agencies, other associations, transportation consultants, and

individual private citizens submitted comments.

The AASHTO generally supported FHWA's proposal to remove the last sentence in the definition of STANDARD in Section 1A.13; however, it expressed that the value of such a change would be minimized by the proposed language in Section 1A.09 regarding the use of engineering judgment and engineering studies. The AASHTO asserted that FHWA's proposed language in Section 1A.09 was insufficient because it did not include additional sentences from the 2003 edition of the MUTCD GUIDANCE statement that emphasized the importance of using engineering judgment in the placement of traffic control devices. The AASHTO also disagreed with the OPTION statement proposed for Section 1A.09 in the NPA, contending that it limited the application of engineering judgment or an engineering study to a specific site. The AASHTO submitted a second letter recommending a new sentence that would allow programmatic deviations from a STANDARD based on an engineering study. The NCUTCD, APWA, NACE, 23 State DOTs, 4 local agencies, and 1 transportation consultant submitted comments similar to AASHTO's first letter.

The ATSSA and the Association of American Railroads supported the NPA in its entirety and specifically disagreed with AASHTO's comments regarding Section 1A.09. Three transportation consultants asserted that the definition of STANDARD and the 2009 edition of the MUTCD's text on the application of engineering judgment and studies are appropriate and do not need to be revised. These comments, including those raised by AASHTO that are identified above, are discussed in more detail in the section-by-section discussions below for both 1A.13 and 1A.09.

Comments Outside the Scope of the Rulemaking

In addition to commenting on the proposed changes, AASHTO and four State DOTs suggested that the FHWA use this rulemaking process to address the issue of ''substantial conformance'' of State MUTCDs, as defined in the Code of Federal Regulations (CFR). Specifically, AASHTO suggested that FHWA issue interim final rules to revise 23 CFR 655.602 and 655.603 so that States could apply engineering judgment and studies to delete STANDARDS from their State MUTCDs and still have their State MUTCDs accepted by FHWA as being in substantial conformance with the national MUTCD. The meaning of ''substantial conformance'' was considered and established through a final rule published in the **Federal Register** on December 14, 2006 at 74 FR 75111. Because the NPA for this rulemaking did not propose any changes to this meaning and did not solicit public comments about this topic, this issue is outside the scope of this rulemaking and will not be addressed in this final rule.

Three States also expressed concern with compliance dates, suggesting that compliance dates the States viewed as unessential be removed or delayed. One State also suggested that FHWA address systematic upgrading of traffic control devices in this rulemaking. Comments related to the issue of compliance dates listed in the MUTCD are currently being considered in response to an NPA published in the **Federal Register** on August 31, 2011 at 76 FR 54156. Because the NPA for this rulemaking did not propose any changes to the compliance dates or to the meaning of ''systematic upgrading of traffic control devices'' and did not solicit public comments about these topics, these issues are outside the scope of this rulemaking and will not be addressed in this final rule.

Discussion of Comments by Section

1. In the MUTCD Section 1A.13, Definitions of Headings, Words, and Phrases, the FHWA proposed in the NPA to delete the last sentence in the definition of the heading STANDARD. This sentence, which was added in the 2009 edition of the MUTCD, stated:

> Standard statements shall not be modified or compromised based on engineering judgment or engineering study.

The majority of commenters, including AASHTO, NCUTCD, APWA, NACE, State DOTs, and local agencies, supported removing this sentence. Two States suggested adding language to the definition of STANDARD to help clarify that site-specific conditions may make it impossible or impractical for an agency to comply with a STANDARD. The FHWA believes that such a change is not necessary because restoration of certain GUIDANCE statements from the 2003 MUTCD will provide for deviation from a STANDARD in limited, specific cases at a location, or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. Therefore, the FHWA adopts the removal of this sentence from the definition of STANDARD in Section 1A.13, as proposed in the NPA.

The NCUTCD, APWA, and NACE also suggested that the definitions for ''engineering judgment'' and ''engineering study'' in Section 1A.13 should be restored to the text found in the 2003 edition of the MUTCD. Specifically, these commenters reasoned that because this rulemaking pertains to exercising engineering judgment and using engineering studies to make traffic control device decisions, it is appropriate to restore the definitions of these terms to the ones contained in the 2003 edition of the MUTCD. The FHWA did not propose any changes to the definitions of ''engineering judgment'' or ''engineering study,'' which are contained within a STANDARD statement in Section 1A.13, and thus any changes to these definitions are outside the scope of this rulemaking. The FHWA might give consideration to proposing revisions to these definitions in conjunction with a future NPA for the next edition of the MUTCD.

2. In Section 1A.09, Engineering Study and Engineering Judgment, FHWA proposed in the NPA to add a GUIDANCE paragraph stating that the decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. The FHWA proposed this change in order to reinstate one of the three GUIDANCE sentences in the 2003 edition of the MUTCD that had been removed in the 2009 edition of the MUTCD. The AASHTO, NCUTCD, APWA, NACE, and the majority of the State and local agencies supported FHWA's proposal, but felt that it was insufficient because it did not include restoration of the two other sentences from the 2003 edition of the MUTCD GUIDANCE statement. Those second and third sentences stated:

> Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

Specifically, AASHTO stated that the exclusion of the second sentence from the 2003 edition of the MUTCD GUIDANCE statement, coupled with FHWA's proposal, would not adequately support the reinstatement of engineering judgment into the application of traffic control devices. The NCUTCD, NACE, and APWA suggested that only the second sentence from the 2003 edition of the GUIDANCE statement should be restored. Two State

DOTs agreed with the NPA as proposed. Three transportation consultants disagreed with the proposed GUIDANCE in the NPA, asserting that the application of engineering judgment and studies as described in the 2009 edition of the MUTCD is appropriate and does not need to be revised.

In a second letter to the docket, AASHTO also recommended adding a new, fourth sentence to the GUIDANCE that would state:

> An engineering study is required for programmatic deviations from Standards contained within this Manual.

Such language effectively would allow agencies to deviate from a STANDARD on a programmatic basis, rather than based on impracticality at a specific site supported by engineering judgment or study. As noted in the NPA, it is not and has never been the intention of the FHWA to authorize a highway agency to adopt or implement broad policies or practices that deviate from a STANDARD on a blanket or programmatic basis jurisdictionwide, regionwide, on all highways of a particular class, or using similar criteria. Therefore, FHWA believes adding a fourth sentence of GUIDANCE as suggested by AASHTO's second letter is not appropriate.

In the NPA, FHWA proposed to add a new OPTION paragraph stating that when an engineering study or the application of engineering judgment determines that unusual site-specific conditions at a particular location make compliance with a STANDARD statement impossible or impractical, an agency may deviate from that STANDARD statement at that location. The AASHTO, NCUTCD, APWA, NACE, and 20 State DOTs disagreed and suggested that this language be removed because such an application would be overly restrictive and financially burdensome on agencies. Specifically, these commenters stated that such language would require jurisdictions to study each site individually, even where multiple locations with the same or similar conditions make a particular deviation necessary. Additionally, several State agencies indicated that the proposed OPTION statement did not reflect the intent of FHWA's Official Interpretation number 1(09)–1 (I),[1] dated October 1, 2010, which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. We would note that FHWA did not intend for the proposed OPTION language to trigger studies for each location with similar conditions. Nevertheless, FHWA has determined that the OPTION paragraph proposed in the NPA is not needed because the topic is adequately addressed by Official Interpretation 1(09)–1 (I), which is still in effect.

In consideration of the comments received and our determination that the OPTION language in the NPA is not needed, we have decided, instead, to restore the three 2003 MUTCD GUIDANCE sentences that were subsequently removed in the 2009 MUTCD edition. The inclusion of such language will continue our current practice under Official Interpretation 1(09)–1 (I) to allow deviations from a STANDARD only on the basis of either an engineering study or the application of engineering judgment. Thus, the GUIDANCE language in Section 1A.09 will now read as follows:

> The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

The FHWA will continue to consider matters raised by this rulemaking to inform future decisions regarding the MUTCD.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of U.S. Department of Transportation regulatory policies and procedures because of the significant public interest in the MUTCD. Additionally, this action complies with the principles of Executive Order 13563. The changes in the MUTCD will provide additional clarification, guidance, and flexibility in the application of traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities, including small governments. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule will provide clarification and additional flexibility.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and changes made by this rule are directed at enhancing safety. To the extent that these amendments may override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The changes provide additional

[1] This Official Interpretation of the MUTCD can be viewed at the following Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/1_09_1.htm.*

guidance, flexibility, and clarification and will not require an expenditure of funds. This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $140.8 million or more in any 1 year (2 U.S.C. 1532).

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Pavement Markings, Traffic regulations.

Issued on: May 9, 2012.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

■ 1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315 and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—[Amended]

■ 2. Revise § 655.601, to read as follows:

§ 655.601 Purpose.

To prescribe the policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices on all streets and highways in accordance with the following references that are approved by the FHWA for application on Federal-aid projects:

(a) MUTCD.

(b) AASHTO Guide to Metric Conversion.

(c) AASHTO Traffic Engineering Metric Conversion Factors.

(d) The standards required in this section are incorporated by reference into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FHWA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Highway Administration, Office of Transportation Operations, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–8043 and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/index.html.*

(1) AASHTO, American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street NW., Washington, DC 20001

(i) AASHTO Guide to Metric Conversion, 1993;

(ii) AASHTO, Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, October 1993.

(2) FHWA, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 366–1993, also available at *http://mutcd.fhwa.dot.gov.*

(i) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 Edition, including Revisions No. 1 and No. 2, FHWA, dated May 2012.

(ii) [Reserved]

[FR Doc. 2012–11712 Filed 5–10–12; 4:15 pm]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2010–0159]

RIN 2125–AF43

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The MUTCD is incorporated in regulations, approved by the FHWA, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. The purpose of this final rule is to revise certain information relating to target compliance dates for traffic control devices. This final rule revises Table I–2 of the MUTCD by eliminating the compliance dates for 46 items (8 that had already expired and 38 that had future compliance dates) and extends and/or revises the dates for 4 items. The target compliance dates for 8 items that are deemed to be of critical safety importance will remain in effect. In addition, this final rule adds a new Option statement exempting existing historic street name signs within a locally identified historic district from the Standards and Guidance of Section 2D.43 regarding street sign color, letter size, and other design features, including retroreflectivity.

Consistent with Executive Order 13563, and in particular its emphasis on burden-reduction and on retrospective analysis of existing rules, the changes adopted are intended to reduce the costs and impacts of compliance dates on State and local highway agencies and to streamline and simplify the information. The MUTCD, with these changes incorporated, is being designated as Revision 2 of the 2009 edition of the MUTCD.

DATES: *Effective Date:* This final rule is effective June 13, 2012. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of June 13, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Eng, Office of Transportation Operations, (202) 366–8043; or Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed amendment (NPA), and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://archives.gov/federal-register* and the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys.*

Executive Summary

I. Purpose of the Regulatory Action

The purpose of this final rule is to revise certain information relating to target compliance dates for traffic control devices. The changes adopted are intended to reduce the impacts of compliance dates on State and local highway agencies and streamline and simplify information contained in the MUTCD without reducing safety. The FHWA has the authority to prescribe standards for traffic control devices on all roads open to public travel pursuant to 23 U.S.C. 109(d), 114(a), 217, 315, and 402(a).

II. Summary of the Major Provisions of the Regulatory Action in Question

This final rule revises Table I–2 of the MUTCD by eliminating the compliance dates for 46 items (8 that had already expired and 38 that had future compliance dates) and extends and/or revises the dates for 4 items. The target compliance dates for 8 items that are deemed to be of critical safety importance will remain in effect. In addition, this final rule adds a new Option statement exempting existing historic street name signs within a locally identified historic district from the Standards and Guidance of Section 2D.43 regarding street sign color, letter size, and other design features, including retroreflectivity.

III. Costs and Benefits

The changes in this rulemaking will not require the expenditure of additional funds, but rather will provide State and local governments with the flexibility to allocate scarce financial resources based on local conditions and the useful service life of its traffic control devices. Since this rulemaking will benefit State and local governments by providing additional clarification, guidance and flexibility, it is anticipated that the economic impacts will be minimal and that costs and burdens will be reduced. Thus, a full regulatory evaluation was not conducted.

Revised Table I–2

This final rule amends Table I–2 of the 2009 MUTCD to read as follows:

2009 MUTCD Section No.(s)	2009 MUTCD Section title	Specific provision	Compliance date
2A.08	Maintaining Minimum Retroreflectivity.	Implementation and continued use of an assessment or management method that is designed to maintain regulatory and warning sign retroreflectivity at or above the established minimum levels (see Paragraph 2).	2 years from the effective date of this revision of the 2009 MUTCD*.
2A.19	Lateral Offset	Crashworthiness of sign supports on roads with posted speed limit of 50 mph or higher (see Paragraph 2).	January 17, 2013 (date established in the 2000 MUTCD).
2B.40	ONE WAY Signs (R6–1, R6–2).	New requirements in the 2009 MUTCD for the number and locations of ONE WAY signs (see Paragraphs 4, 9, and 10).	December 31, 2019.
2C.06 through 2C.14.	Horizontal Alignment Warning Signs.	Revised requirements in the 2009 MUTCD regarding the use of various horizontal alignment signs (see Table 2C–5).	December 31, 2019.

2009 MUTCD Section No.(s)	2009 MUTCD Section title	Specific provision	Compliance date
2E.31, 2E.33, and 2E.36.	Plaques for Left-Hand Exits.	New requirement in the 2009 MUTCD to use E1–5aP and E1–5bP plaques for left-hand exits.	December 31, 2014.
4D.26	Yellow Change and Red Clearance Intervals.	New requirement in the 2009 MUTCD that durations of yellow change and red clearance intervals shall be determined using engineering practices (see Paragraphs 3 and 6).	5 years from the effective date of this revision of the 2009 MUTCD, or when timing adjustments are made to the individual intersection and/or corridor, whichever occurs first.
4E.06	Pedestrian Intervals and Signal Phases.	New requirement in the 2009 MUTCD that the pedestrian change interval shall not extend into the red clearance interval and shall be followed by a buffer interval of at least 3 seconds (see Paragraph 4).	5 years from the effective date of this revision of the 2009 MUTCD, or when timing adjustments are made to the individual intersection and/or corridor, whichever occurs first.
6D.03**	Worker Safety Considerations.	New requirement in the 2009 MUTCD that all workers within the right-of-way shall wear high-visibility apparel (see Paragraphs 4, 6, and 7).	December 31, 2011.
6E.02**	High-Visibility Safety Apparel.	New requirement in the 2009 MUTCD that all flaggers within the right-of-way shall wear high-visibility apparel.	December 31, 2011.
7D.04**	Uniform of Adult Crossing Guards.	New requirement in the 2009 MUTCD for high-visibility apparel for adult crossing guards.	December 31, 2011.
8B.03, 8B.04	Grade Crossing (Crossbuck) Signs and Supports.	Retroreflective strip on Crossbuck sign and support (see Paragraph 7 in Section 8B.03 and Paragraphs 15 and 18 in Section 8B.04).	December 31, 2019.
8B.04	Crossbuck Assemblies with YIELD or STOP Signs at Passive Grade Crossings.	New requirement in the 2009 MUTCD for the use of STOP or YIELD signs with Crossbuck signs at passive grade crossings.	December 31, 2019.

* Types of signs other than regulatory or warning are to be added to an agency's management or assessment method as resources allow.
** MUTCD requirement is a result of a legislative mandate.
Note: All compliance dates that were previously published in Table I–2 of the 2009 MUTCD and that do not appear in this revised table have been eliminated.

Background

One of the purposes of the MUTCD is to provide for the consistent and uniform application of traffic control devices on streets and highways open to public travel. These traffic control devices are designed to promote highway safety and efficiency. As technology evolves and surroundings change, new provisions for traffic control devices and their application may be proposed. When new provisions are adopted in a new edition or revision of the MUTCD, any new or reconstructed traffic control devices installed after adoption are required to be in compliance with the new provisions. Existing devices already in use that do not comply with the new MUTCD provisions are expected to be upgraded by highway agencies over time to meet the new provisions, unless the FHWA establishes a target compliance date for upgrading such devices. If such a target date has been established by the FHWA through the Federal rulemaking process, agencies are to upgrade existing noncompliant devices on or before the target compliance date. Due to the current economic climate, State and local agencies have expressed concern about the potential costs associated with replacing noncompliant traffic control devices within the target compliance dates previously adopted in the MUTCD. In response to those concerns, the FHWA issued a Request for Comments in the **Federal Register** [1] seeking public input on traffic control device compliance dates.

After reviewing and considering the nearly 600 letters submitted by State and local government highway agencies, national associations, traffic industry representatives, traffic engineering consultants, and private citizens, on August 31, 2011, the FHWA published a Notice of Proposed Amendments (NPA), proposing revisions to the MUTCD at 76 FR 54156. The NPA proposed to revise Table I–2 of the 2009 edition of the MUTCD to eliminate the compliance dates for 46 items (8 that have already expired and 38 that have future compliance dates) and to extend and/or revise the dates for 4 items. In addition, the NPA proposed to retain the target compliance dates for eight items that were deemed to be of critical safety importance. Interested persons were invited to submit comments to FHWA Docket No. FHWA–2010–0159. Based on the comments received and its own experience, the FHWA is issuing this final rule and is designating the MUTCD, with these changes incorporated, as Revision 2 of the 2009 edition of the MUTCD.

The text of Revision 2 of the 2009 edition of the MUTCD, with these final rule changes incorporated, is available for inspection and copying, as prescribed in 49 CFR part 7, at the FHWA Office of Transportation Operations (HOTO–1), 1200 New Jersey Avenue SE., Washington, DC 20590. Furthermore, the text of the 2009 edition of the MUTCD, with these final rule changes and the changes of Revision 1 also incorporated, is available on the FHWA's MUTCD Web site at: *http://mutcd.fhwa.dot.gov.* The 2009 edition with Revisions 1 and 2 incorporated supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received, reviewed, and analyzed 158 letters submitted to the docket, which contain nearly 240 different comments on the proposed changes. The American Association of State Highway and Transportation Officials (AASHTO), the National Committee on Uniform Traffic Control Devices (NCUTCD), the American Public Works Association (APWA), the National Association of County Engineers (NACE), the American Traffic Safety Services Association (ATSSA), American Road and Transportation

[1] 75 FR 74128, November 30, 2010.

Builders Association (ARTBA), State departments of transportation (DOTs), city and county government agencies, other associations, transportation consultants, and individual private citizens submitted comments. The majority of the comments were fully or partially supportive of the NPA proposal, agreeing with the general intent. The AASHTO agreed with the NPA, except for two specific compliance dates that were retained in the NPA (see below for additional details). In addition to commenting on the compliance date proposal, several local jurisdictions and individuals submitted comments regarding existing provisions in Section 2D.43 of the MUTCD that affect ''historic'' street name signs in their communities. A summary of the comments received and the changes in the MUTCD adopted in this final rule are included in the following section.

Discussion of Comments on Table I–2 and Adopted Revisions

As noted above, most the comments were fully or partially supportive of the NPA proposal, and agreed with the general intent of the NPA. Many commenters had previously taken the opportunity to comment on the November 30, 2010, request for comments on traffic control compliance dates published at 75 FR 74128. As a result, the proposals in the NPA reflected many of the commenters' concerns and opinions. The following discussion addresses the significant issues raised by comments in opposition to elements of the NPA published on August 31, 2011 at 76 FR 54156.

1. In the NPA, the FHWA proposed to eliminate 46 of the existing compliance dates (not including the two associated with sign retroreflectivity). Six citizens and one association of local governments in Minnesota opposed these 46 eliminations, on the basis of reduced uniformity and safety of traffic control devices. The Maryland State Highway Administration noted that the NPA preamble stated that FHWA proposed to ''eliminate'' the dates that have already expired for eight items in Table I–2, but the note at the bottom of the table stated that these dates were ''deleted'' from the table. The eight specific compliance dates that have expired were intended to be legally eliminated (rather than just removed from the table). To clarify this issue, the FHWA revises the note at the bottom of the table in the final rule to read, ''All compliance dates that were originally published in Table I–2 of the 2009 MUTCD that do not appear in this revised table have been eliminated.'' The FHWA adopts the elimination of the compliance dates in Table I–2, as proposed in the NPA, for Sections 2B.03, 2B.09, 2B.10, 2B.11, 2B.13, 2B.26, 2B.55, 2C.04, 2C.13, 2C.20, 2C.30, 2C.38, 2C.40, 2C.41, 2C.42, 2C.46, 2C.49, 2C.50, 2C.61, 2C.63, 2D.43 (two provisions), 2D.44, 2D.45, 2G.01 through 2G.07, 2G.11 through 2G.15, 2H.05 and 2H.06, 2I.09, 2I.10, 2J.05, 2N.03, 3B.04 and 3B.05, 3B.18, 4D.01, 4D.31, 4E.07, 5C.05, 7B.11, 7B.12, 7B.16, 8B.19 and 8C.02 through 8C.05, 8C.09, 8C.12, and 9B.18.

The elimination of a compliance date for a given Standard contained in the MUTCD does not eliminate the regulatory requirement to comply with that Standard. The Standard itself remains in the MUTCD and applies to any new installations, but the compliance date for replacing noncompliant devices that exist in the field is eliminated. To further clarify, any new installation of an existing noncompliant device (such as moving a noncompliant device to another location) would also have to comply with the Standard upon installation

2. The FHWA proposed to extend the compliance date by approximately 2 years for the provision in Section 2A.08 that requires agencies to implement an assessment or management method designed to maintain sign retroreflectivity at or above the established minimum levels. As part of this proposal, the FHWA proposed to limit this particular compliance date to apply only to regulatory and warning signs. This compliance date does not require replacement of any signs by a particular date. Rather, it requires highway agencies to implement an assessment or management method for maintaining sign retroreflectivity, in accordance with section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992), by the compliance date. Safety advocacy organizations, the ARTBA, one State DOT, and some industry representatives generally disagreed with the proposal. The ATSSA and some State DOTs agreed with the extension for implementing an assessment/management method, but requested that guide signs not be excluded. However, many agencies stated that including guide signs in the assessment method would limit funds that could be used for other projects. The FHWA disagrees with including guide signs at this time because regulatory and warning signs constitute the highest priority for assessing retroreflectivity of existing signs. The FHWA, therefore, adopts the revisions as proposed in the final rule. The additional cost of including guide signs would increase the economic burden on agencies, whose funds are limited due to the current economic climate. The revisions to the compliance date and its applicability will provide relief and enable agencies to determine when their resources will allow them to add signs, other than regulatory and warning signs, to their assessment or management method. Several commenters noted the confusion and potential for misinterpretation introduced by limiting the compliance date to regulatory and warning signs. The FHWA reiterates that the language in Section 2A.08 still requires agencies to establish a method for all types of signs, but understands that limiting the compliance date to regulatory and warning signs could lead some agencies to mistakenly think that guide signs would never be required to be included in an agency's method. In addition, because the MUTCD requirement is for a method rather than a device, it is unclear how agencies would interpret the application of ''systematic upgrading'' (applicable to MUTCD requirements that have no specific compliance date) in the case of adding guide signs to the agency's management or assessment method. The FHWA adds a footnote to Table I–2 to clarify that other types of signs are to be added to an agency's management or assessment method as resources allow. The FHWA believes that adding this footnote in the final rule, rather than being silent on the issue, will provide clarity. The FHWA adopts the extension of the compliance date from January 22, 2012, to 2 years after this final rule and adds a footnote as discussed above.

In addition, the FHWA proposed in the NPA to eliminate the compliance dates for replacement of signs found not to meet the minimum retroreflectivity standards. The ATSSA, the ARTBA, other safety advocates, industry representatives, some States and cities, and several citizens disagreed with eliminating the January 22, 2015, and January 22, 2018, compliance dates and suggested that the dates instead be extended to 2018 and 2021, respectively. Even without a specific date, agencies will still need to replace any sign they identify as not meeting the established minimum retroreflectivity levels. Their schedules replacing the signs, however, would be based on resources and relative priorities, rather than specific compliance dates. As a result, the FHWA eliminates these compliance dates in the final rule.

3. The FHWA proposed to extend the compliance dates for signal timing adjustments associated with vehicular

yellow and red clearance intervals in Section 4D.26 and pedestrian clearance intervals in Section 4E.06 from December 31, 2014, to 5 years after this final rule. The National Association of City Transportation Officials requested a further extension to 10 years after the final rule and Pennsylvania DOT suggested eliminating this date instead of extending it. The FHWA disagrees with extending the compliance date even further into the future or eliminating it, as the extension that was proposed in the NPA achieves a reasonable balance between the need for these critical safety retiming efforts and resource constraints. As mentioned in the NPA, the original compliance date of December 31, 2014 published for the 2009 edition of the MUTCD was based on what FHWA believed to be the typical signal retiming frequency of about 5 years. This new proposed compliance date provides agencies with more than 2 additional years to implement the new requirements of Sections 4D.26 and 4E.06 at any locations that have not already been made compliant under a previous intersection or corridor retiming. Thus, the FHWA believes that it is reasonable for agencies to retime those signals by 2017 that have not already been made compliant under a previous intersection or corridor retiming. The FHWA adopts the extension of the compliance dates for Sections 4D.26 and 4E.06 to 5 years after this final rule, or when timing adjustments are made to the individual intersections and/or corridor, whichever occurs first, as proposed in the NPA.

4. In the NPA, the FHWA proposed to revise and extend the compliance dates in Sections 8B.03 and 8B.04 related to requiring retroreflective strips on the back of Crossbuck signs and on the front and back of supports for Crossbuck signs at passive railroad grade crossings (those crossings that do not have gates and/or flashing lights activated upon approach of a train). As discussed in the NPA, the FHWA proposed to extend this compliance date to December 31, 2019, which would coincide with the date for adding YIELD or STOP signs with Crossbuck signs at passive grade crossings so that railroad companies and highway agencies can avoid unnecessary expense and achieve greater economies of sending sign crews to crossings only once rather than twice. The FHWA also proposed to extend the compliance date to clarify that the requirements for retroreflective strips are in Section 8B.04 as well as Section 8B.03 and to clarify that the compliance date was also intended to apply to the retroreflective strip on the backs of the Crossbuck signs. Two State DOTs and one consultant opposed this extension, suggesting instead that the dates be eliminated. Two commenters questioned the effectiveness of the devices but did not provide supporting evidence. As a result, the FHWA could not evaluate the commenters' effectiveness concerns. As to the suggestion of eliminating the compliance date entirely, the FHWA disagrees with those commenters because the extension proposed in the NPA provides an additional 9 years beyond the original 10-year compliance period established for this requirement in the 2000 edition of the MUTCD, while achieving the practical benefit of allowing agencies and companies to apply the retroreflective strips at the same time that they add YIELD or STOP signs at those same crossings. The FHWA adopts the revision and extension of this compliance date to December 31, 2019, as proposed in the NPA.

5. The FHWA proposed in the NPA to retain the existing target compliance dates for eight items that it deemed to be of critical safety importance, based on existing evidence, FHWA's subject matter expertise, and FHWA's experience in traffic control device matters. As stated in the NPA, final rules establishing compliance dates for each of the eight items clearly identified the safety justification for the compliance dates established. As a general comment, the NCUTCD, the NACE, three State DOTs, two cities, and two State associations of engineers requested that all retained compliance dates be justified by a benefit/cost analysis in accordance with Executive Order 13563. The FHWA disagrees that such an analysis is necessary because the compliance dates are already in the MUTCD and were put in place prior to the issuance of the Executive Order. This rulemaking is not establishing new, more burdensome dates for these items and is actually relieving burdens associated with many existing compliance dates. The following paragraphs describe the concerns that commenters expressed specifically related to the target compliance dates retained by the FHWA.

The FHWA proposed to retain the January 17, 2013, target compliance date for provisions in Section 2A.19 requiring crashworthiness of existing sign supports on roads with posted speed limits of 50 miles per hour (mph) or higher. This compliance date was established in the 2003 edition of the MUTCD. The AASHTO, the NCUTCD, the NACE, four State DOTs, a city, and a state association of engineers requested extension of the January 17, 2013, compliance date to 2019, or the end of the useful life of the sign supports (with no specific compliance date), rather than retaining the existing compliance date. The commenters did not provide supporting evidence for their position. The FHWA disagrees with eliminating or extending the compliance date because eliminating fixed-object hazards on high-speed roads remains a critical safety need due to the potential for death or severe injury that can result from high-speed, run-off-the-road crashes when non-crashworthy sign supports are struck. The following data on fatal crashes on roads with speed limits of 50 mph or higher, where a sign support was the ''most harmful event,'' was obtained from the Fatality Analysis Reporting System (FARS).[2]

Most harmful event	Year				
	2005	2006	2007	2008	2009
Highway Sign Post	47	56	54	71	53
Overhead Sign Support	9	9	12	17	12
Total Fatalities	56	65	66	88	65

During the 5-year period from 2005 to 2009, on average each year, 68 fatalities occurred that can be attributed to collisions with sign supports. The most recent year where full data is available is 2009. The data does not differentiate between crashworthy and non-crashworthy supports. However, based on this data, if the compliance date was

[2] *http://www.nhtsa.gov/FARS.*

extended by 6 years, about 400 potential fatalities might occur during that time. Collisions with sign supports are the cause of about 15 percent of the total fatalities involving poles of any sort. Nevertheless, they represent a significant problem on high-speed roads. To address this problem, in late 2000, the MUTCD addressed this issue by adding a requirement for a 10-year compliance date (2013), which was formally adopted in 2003. By 2013, agencies will have had 12 years to comply. The FHWA adopts the retention of the existing January 17, 2013, compliance date for this item, as proposed in the NPA.

For provisions in Section 2B.40 that require agencies to install additional ONE WAY signs at certain types of intersections, the FHWA proposed retaining the target compliance date of December 31, 2019, as established in the 2009 edition of the MUTCD. Two State DOTs and a county disagreed with retaining the existing compliance date and asked that the date be eliminated instead. The FHWA adopts the retention of the existing compliance date for this item, as proposed in the NPA, because of the safety issues associated with wrong-way travel on divided highways (the subject of a current National Transportation Safety Board (NTSB) investigation), research on the needs of older drivers, and the significant safety benefits to road users that the addition of such signs may provide.[3]

The FHWA proposed in the NPA to retain the December 31, 2019, target compliance date for the provisions in Sections 2C.06 through 2C.14 that require the use of various horizontal alignment warning signs and determinations of advisory speed values, adopted in the 2009 edition of the MUTCD. The AASHTO, the NCUTCD, the NACE, eight State DOTs, one city, a State association of engineers, and a consultant requested postponing the existing compliance date until National Cooperative Highway Research Program (NCHRP) Project 03–106 (''Traffic Control Device Guidelines for Curves'') confirms or disproves the costs and benefits of these warning signs, rather than retaining the date. The FHWA disagrees with extending the date because the NCHRP research is due to be completed by the end of 2015, which is 4 years before the compliance date. Four years allows sufficient time for revision of the 2019 date, if necessary. As stated in the NPA, the FHWA established the 10-year compliance date due to the safety issues associated with run-off-the-road crashes at horizontal curves and the disproportionate number of fatalities at horizontal curves on the Nation's highways. The FHWA adopts the retention of the existing compliance date for this item, as proposed in the NPA.

One State DOT disagreed with the FHWA's proposal in the NPA to retain the December 31, 2014, compliance date associated with requiring the use of LEFT EXIT plaques on guide signs for left exits established in Sections 2E.31, 2E.33, and 2E.36 of the 2009 edition of the MUTCD. The State DOT suggested eliminating, rather than retaining, the compliance date. The FHWA disagrees, because the 5-year target compliance date was established to address a recommendation of the NTSB arising from a significant safety concern with left-hand exits. The NTSB made a specific recommendation that the implementation of the LEFT plaque at left-hand exits be accelerated with a 5-year compliance date due to the fact that left-hand exits, though relatively rare, continue to violate driver expectancy at freeway and expressway locations. The lack of clear notice of a left-hand exit was cited as a contributing factor in a 2007 fatal crash of a motorcoach that inadvertently departed the freeway lanes at a left-hand exit. The FHWA adopts the retention of the December 31, 2014, compliance date in the final rule. As stated in the NPA, the installation of these plaques generally does not require replacement of the existing sign or sign support and this change affects relatively few existing locations throughout the country.

As proposed in the NPA, the FHWA adopts the retention of the existing December 31, 2011, target compliance date associated with the requirements in Sections 6D.03, 6E.02, and 7D.04 that all workers, including flaggers and school crossing guards must wear high-visibility apparel within the right-of-way of all highways, not just Federal-aid highways. Although a consultant suggested that the compliance date for high-visibility apparel should be eliminated because the compliance date will have expired by the time the final rule becomes effective, the FHWA retains the existing compliance date. Due to safety concerns and minimal costs, the FHWA does not believe agencies that have not yet complied should be relieved from compliance at the earliest possible time.

Finally, as proposed in the NPA, the FHWA adopts the retention of the existing December 31, 2019, target compliance date for the provisions in Section 8B.04 that require the use of either a YIELD or STOP sign with the Crossbuck sign at all passive grade crossings. Two State DOTs and a consultant disagreed with retaining the existing compliance date, suggesting that the date be eliminated. One of these commenters stated that this signing was only minimally effective and that compliance by the existing date was too costly but did not provide any evidence for either of these statements. The FHWA disagrees, because the 10-year compliance period provides adequate time to install these signs and because research has found the signs are needed to improve grade crossing safety.[4]

Discussion of Comments on Section 2D.43 and Adopted Revisions

Comments on the provisions of Section 2D.43 regarding Street Name signs were submitted to the docket by officials and citizens of the Township of Lower Merion, Pennsylvania, the Town of Brookline, Massachusetts, citizens of Saugerties and Forest Hills, New York, and the organization Historic New England. The comments stated that the communities have ''historic'' Street Name signs that do not meet the Standards and Guidance of Section 2D.43 regarding color, letter size, and other design features, including retroreflectivity. These communities asked for an exemption from the MUTCD so that they can retain their historic Street Name signs without fear of noncompliance with the MUTCD. These docket comments are similar to other concerns raised previously to the FHWA by two other communities (Fox Point, Wisconsin, and Waverly, Pennsylvania). The FHWA understands the desire of some communities to retain truly historic Street Name signs that are a key component of maintaining the historic character and environment of a particular district.

The FHWA agrees to provide flexibility for communities with historic Street Name signs that do not meet the provisions of the MUTCD, where the community deems the historic Street Name signs to meet the need for effective navigational information to road users. However, the FHWA believes that such flexibility is appropriate only in specific circumstances and lower risk situations. The Code of Federal Regulations, in 36 CFR part 60, governs the listing on the

[3] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report No. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations I.E(4), I.K(2), and I.K(3).

[4] See NCHRP Report 470: Traffic-Control Devices for Passive Railroad-Highway Grade Crossings, available at *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

National Register of Historic Places (NRHP) of historic districts and structures such as Street Name signs. Specifically, 36 CFR 60.4 provides criteria for evaluating a district to be identified as a historic district and for evaluating a system of structures, such as Street Name signs, to be identified as historic structures.

Therefore, the FHWA adds a new OPTION paragraph at the end of Section 2D.43 stating, ''On lower speed roadways, historic street name signs within locally identified historic districts that are consistent with the criteria contained in 36 CFR 60.4 for such structures and districts may be used without complying with the provisions of Paragraphs 3, 4, 6, 9, 12 through 14, and 18 through 20 of this section.''

The FHWA believes that the vast majority of what is expected to be a fairly small number of historic Street Name signs meeting the criteria will be on local roads with speed limits of 25 mph or less. If a community decides to use the new OPTION to retain existing historic Street Name signs within a historic district, the FHWA believes it is important for the community to ensure that the historic Street Name signs provide at least some degree of utility as navigational devices for road users. External illumination of the Street Name signs should be considered for this purpose. It is also important to note that the OPTION applies only to historic Street Name signs in historic districts meeting the eligibility criteria of 36 CFR 60.4 and does not apply to other types of traffic signs or devices, nor to locations outside of historic districts.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action constitutes a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures due to the significant public interest in issues surrounding the MUTCD. This action complies with Executive Orders 12866 and 13563 to improve regulation. In particular, this action is consistent with, and can be seen as directly responsive to, the requirements of Executive Order 13563, and in particular its requirement for retrospective analysis of existing rules (section 6), with an emphasis on streamlining its regulations. This approach is also consistent with Presidential Memorandum, Administrative Flexibility, which calls for reducing burdens and promoting flexibility for State and local governments.

The changes in the MUTCD will reduce burdens on State and local government in the application of traffic control devices. They will provide additional clarification, guidance, and flexibility to such governments. The uniform application of traffic control devices will greatly improve roadway safety and traffic operations efficiency. The standards, guidance, options, and support are also used to create uniformity and to enhance safety and mobility. The changes in this rulemaking will not require the expenditure of additional funds, but rather will provide State and local governments with the flexibility to allocate scarce financial resources based on local conditions and the useful service life of its traffic control devices. It is anticipated that the economic impact of this rulemaking will be minimal and indeed costs and burdens will be reduced, not increased; therefore, a full regulatory evaluation is not required.

As noted, this action streamlines existing significant regulation to reduce burden and promote the flexibilities of State and local governments under Executive Order 13563. In response to concerns about the potential impact of previously adopted MUTCD compliance dates on State and local governments in the current economic climate, the FHWA published a Request for Comments on traffic control device compliance dates. The FHWA asked for responses to a series of seven questions about compliance dates, their benefits and potential economic impacts, especially economic hardships to State and local governments that might result from specific target compliance dates for upgrading certain non-compliant existing devices. The responses received from that notice were considered in the development of this final rule. The FHWA anticipates that this rulemaking will reduce the impacts of compliance dates on State and local highway agencies and will streamline and simplify information contained in the MUTCD without reducing safety. The FHWA has retained compliance dates where it is of critical safety importance.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects these changes on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities because this rule will reduce burdens and provide clarification and additional flexibility, and will not require an expenditure of funds.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999. This action will increase flexibility for State and local governments. The FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments. In general, this rule will increase flexibility for States and local governments. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). On the contrary, the rule provides additional guidance, flexibility, and clarification and would not require an expenditure of funds. This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $140.8 million or more in any 1 year (2 U.S.C. 1532).

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: May 9, 2012.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

■ 1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315 and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—[Amended]

■ 2. Revise § 655.601 to read as follows:

§ 655.601 Purpose.

To prescribe the policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices on all streets and highways in accordance with the following references that are approved by the FHWA for application on Federal-aid projects:

(a) MUTCD.

(b) AASHTO Guide to Metric Conversion.

(c) AASHTO Traffic Engineering Metric Conversion Factors.

(d) The standards required in this section are incorporated by reference into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FHWA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Highway Administration, Office of Transportation Operations, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–8043 and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/index.html.*

(1) AASHTO, American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street NW., Washington, DC 20001

(i) AASHTO Guide to Metric Conversion, 1993;

(ii) AASHTO, Traffic Engineering Metric Conversion Factors, 1993—Addendum to the Guide to Metric Conversion, October 1993.

(2) FHWA, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 366–1993, also available at *http://mutcd.fhwa.dot.gov.*

(i) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 Edition, including Revisions No. 1 and No. 2, FHWA, dated May 2012.

(ii) [Reserved]

[FR Doc. 2012–11710 Filed 5–10–12; 4:15 pm]

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FEDERAL REGISTER

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Part V

The President

Executive Order 13610—Identifying and Reducing Regulatory Burdens

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13610 of May 10, 2012

Identifying and Reducing Regulatory Burdens

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

Section 1. *Policy.* Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system ''must measure, and seek to improve, the actual results of regulatory requirements.'' To promote this goal, that Executive Order requires agencies not merely to conduct a single exercise, but to engage in ''periodic review of existing significant regulations.'' Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to ''determine whether any such regulations should be modified, streamlined, expanded, or repealed.'' The purpose of this requirement is to ''make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

In response to Executive Order 13563, agencies have developed and made available for public comment retrospective review plans that identify over five hundred initiatives. A small fraction of those initiatives, already finalized or formally proposed to the public, are anticipated to eliminate billions of dollars in regulatory costs and tens of millions of hours in annual paperwork burdens. Significantly larger savings are anticipated as the plans are implemented and as action is taken on additional initiatives.

As a matter of longstanding practice and to satisfy statutory obligations, many agencies engaged in periodic review of existing regulations prior to the issuance of Executive Order 13563. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

Sec. 2. *Public Participation in Retrospective Review.* Members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments, have important information about the actual effects of existing regulations. For this reason, and consistent with Executive Order 13563, agencies shall invite, on a regular basis (to be determined by the agency head in consultation with the Office of Information and Regulatory Affairs (OIRA)), public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. To promote an open exchange of information, retrospective analyses of regulations, including supporting data, shall be released to the public online wherever practicable.

Sec. 3. *Setting Priorities.* In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the

public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

Sec. 4. *Accountability.* Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

Sec. 5. *General Provisions.* (a) For purposes of this order, ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) 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.

THE WHITE HOUSE,
May 10, 2012.

[FR Doc. 2012–11798
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H.R. 473/P.L. 112–103
Help to Access Land for the Education of Scouts (Apr. 2, 2012; 126 Stat. 284)

H.R. 886/P.L. 112–104
United States Marshals Service 225th Anniversary Commemorative Coin Act (Apr. 2, 2012; 126 Stat. 286)

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