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Presidential Documents

Title 3—

The President

Proclamation 8832 of June 1, 2012

African-American Music Appreciation Month, 2012

By the President of the United States of America

A Proclamation

As a long-cherished piece of American culture, music offers a vibrant soundtrack to the story of our people and our Union. At times when words alone could not bring us together, we have found in melodies and choruses the universal truths of our shared humanity. African-American musicians have left an indelible mark on this tradition, and during African-American Music Appreciation Month, we pay special tribute to their extraordinary contributions.

Generations of African Americans have used music to share joy and pain, triumph and sorrow. Spiritual hymns gave hope to those laboring under the unrelenting cruelty of slavery, while gospel-inspired freedom songs sustained a movement for justice and equality for all. The smooth sounds of jazz and the soulful strain of the blues fed a renaissance in art and prose. The rhythm and blues that began in a basement in Detroit brought people together when laws would have kept them apart, while the urban beats and young wordsmiths from cities coast-to-coast gave voice to a new generation. And on stages and in concert halls around the world, African-American singers and composers have enhanced opera, symphony, and classical music by bringing energy and creativity to traditional genres.

At its core, African-American music mirrors the narrative of its original creators—born of humble beginnings and raised to refuse the limitations and circumstances of its birth. This month, we honor the African-American musicians, composers, singers, and songwriters who have forever shaped our musical heritage, and celebrate those who carry this rich legacy forward.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2012 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and foster appreciation of music that is composed, arranged, or performed by African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–13944
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Presidential Documents

Proclamation 8833 of June 1, 2012

Great Outdoors Month, 2012

By the President of the United States of America

A Proclamation

America's natural treasures and unique landscapes have always mirrored the rugged independence and cherished diversity that define our national character. From rocky coasts to lush woodlands to urban parks, our great outdoors have set the scene for countless adventures, trials, and triumphs. During Great Outdoors Month, we celebrate our long legacy of environmental stewardship and resolve to preserve clean and healthy outdoor spaces for generations to come.

Thanks to centuries of forward-thinking Americans—from leaders like Presidents Abraham Lincoln and Theodore Roosevelt to private citizens and neighborhood groups—our lives have been enriched by a tremendous array of natural beauty. To uphold this tradition, I was proud to launch the America's Great Outdoors Initiative. Building on input from tens of thousands of people across our country, we are joining with communities, landowners, sportsmen, businesses, and partners at every level of government to reconnect Americans with the natural world and lay the foundation for a more sustainable planet. Through the Initiative, we are also helping support farms and ranches that provide our Nation with food, fiber, and energy. The 21st Century Conservation Service Corps is empowering our Nation's youth to restore and protect our public lands and waters through meaningful jobs and service opportunities. And First Lady Michelle Obama's *Let's Move Outside!* initiative is encouraging children and families to explore the outdoors and engage in outdoor recreation as part of a healthy, active lifestyle.

Protecting our environment is not only a duty to our children; it is an economic imperative. Visitors to our public lands contribute billions of dollars to local economies, and I am committed to supporting this engine of growth. As part of our National Travel and Tourism Strategy, my Administration is working to increase visits to our national parks and scenic places. This initiative will help support small businesses and drive job growth across our country.

Great Outdoors Month is a time for all Americans to share in the natural splendor of which we are all proud inheritors. Whether camping, fishing, rock climbing, or playing in a neighborhood park, nature offers each of us the opportunity to get active, explore, and strengthen our bonds with family and friends. This month, let us celebrate our natural heritage by experiencing it together.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2012 as Great Outdoors Month. I urge all Americans to explore the great outdoors and to uphold our Nation's legacy of conserving our lands and waters for future generations.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–13947
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Presidential Documents

Proclamation 8834 of June 1, 2012

Lesbian, Gay, Bisexual, and Transgender Pride Month, 2012

By the President of the United States of America

A Proclamation

From generation to generation, ordinary Americans have led a proud and inexorable march toward freedom, fairness, and full equality under the law—not just for some, but for all. Ours is a heritage forged by those who organized, agitated, and advocated for change; who wielded love stronger than hate and hope more powerful than insult or injury; who fought to build for themselves and their families a Nation where no one is a second-class citizen, no one is denied basic rights, and all of us are free to live and love as we see fit.

The lesbian, gay, bisexual, and transgender (LGBT) community has written a proud chapter in this fundamentally American story. From brave men and women who came out and spoke out, to union and faith leaders who rallied for equality, to activists and advocates who challenged unjust laws and marched on Washington, LGBT Americans and allies have achieved what once seemed inconceivable. This month, we reflect on their enduring legacy, celebrate the movement that has made progress possible, and recommit to securing the fullest blessings of freedom for all Americans.

Since I took office, my Administration has worked to broaden opportunity, advance equality, and level the playing field for LGBT people and communities. We have fought to secure justice for all under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, and we have taken action to end housing discrimination based on sexual orientation and gender identity. We expanded hospital visitation rights for LGBT patients and their loved ones, and under the Affordable Care Act, we ensured that insurance companies will no longer be able to deny coverage to someone just because they are lesbian, gay, bisexual, or transgender. Because we understand that LGBT rights are human rights, we continue to engage with the international community in promoting and protecting the rights of LGBT persons around the world. Because we repealed ''Don't Ask, Don't Tell,'' gay, lesbian, and bisexual Americans can serve their country openly, honestly, and without fear of losing their jobs because of whom they love. And because we must treat others the way we want to be treated, I personally believe in marriage equality for same-sex couples.

More remains to be done to ensure every single American is treated equally, regardless of sexual orientation or gender identity. Moving forward, my Administration will continue its work to advance the rights of LGBT Americans. This month, as we reflect on how far we have come and how far we have yet to go, let us recall that the progress we have made is built on the words and deeds of ordinary Americans. Let us pay tribute to those who came before us, and those who continue their work today; and let us rededicate ourselves to a task that is unending—the pursuit of a Nation where all are equal, and all have the full and unfettered opportunity to pursue happiness and live openly and freely.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2012 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of the United States to eliminate prejudice everywhere it exists, and to celebrate the great diversity of the American people.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–13949
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Presidential Documents

Proclamation 8835 of June 1, 2012

National Caribbean-American Heritage Month, 2012

By the President of the United States of America

A Proclamation

Individuals and families from Caribbean countries have journeyed to America's shores for centuries. Some were brought here against their will in the bonds of slavery. Some immigrated to America as children, clutching a parent's hand. Others came as adults, leaving behind everything they knew in pursuit of a better life in a new world. Generations of Caribbean Americans have sought to ensure their children and grandchildren would have the freedom to make of their lives what they will, and during National Caribbean-American Heritage Month, we celebrate their rich narratives and recognize their immeasurable contributions to our country.

Caribbean Americans have shaped every aspect of our society—enhancing our arts and humanities as titans of music and literature, spurring our economy as intrepid entrepreneurs, making new discoveries as scientists and engineers, serving as staunch advocates for social and political change, and defending our ideals at home and abroad as leaders in our military. Their achievements exemplify the tenacity and perseverance embedded in our national character, and their stories embody the fundamental American idea that when access to opportunity is equal, anyone can make it if they try.

As we reflect on the myriad ways Caribbean Americans have shaped our country, we join in commemorating the 50th anniversaries of independence in Jamaica and Trinidad and Tobago, and we reaffirm the bonds of friendship we share with our Caribbean neighbors. This month, let us celebrate the essence of the Nation we all love—an America where so many of our ancestors have come from somewhere else; a society that has been enriched by cultures from around the world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2012 as National Caribbean-American Heritage Month. I encourage all Americans to celebrate the history and culture of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–13950
Filed 6–6–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8836 of June 1, 2012

National Oceans Month, 2012

By the President of the United States of America

A Proclamation

Our oceans help feed our Nation, fuel our economic engine, give mobility to our Armed Forces, and provide a place for rest and recreation. Healthy oceans, coasts, and waterways are among our most valuable resources—driving growth, creating jobs, and supporting businesses across America. During National Oceans Month, we reaffirm our commitment to the oceans and celebrate the myriad benefits they bring to all Americans.

From tourism and fishing to international commerce and renewable energy production, coastal and waterside communities help maintain vital sectors of our Nation's economy. Yet, while our livelihoods are inseparable from the health of these natural systems, our oceans are under threat from pollution, coastal development, overfishing, and climate change. That is why I established our first ever comprehensive National Ocean Policy. The Policy lays out a science-based approach to conservation and management, and brings together Federal, State, local, and tribal governments with all those who have a stake in our oceans, coasts, and the Great Lakes—including recreational and commercial fishermen, boaters, offshore and coastal industries, environmental groups, scientists, and the public. Through the Policy, we have already expanded access to information and tools to support ocean planning efforts. Together, I am confident we will sustain these precious ecosystems and the diverse activities they support.

President John F. Kennedy once told us, ''We are tied to the ocean. And when we go back to the sea—whether it is to sail or to watch it—we are going back from whence we came.'' During National Oceans Month, let us celebrate our heritage as a seafaring Nation by instilling an ethic of good ocean stewardship in all Americans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2012 as National Oceans Month. I call upon Americans to take action to protect, conserve, and restore our oceans, coasts, and the Great Lakes.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of June, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–13954
Filed 6–6–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 77, No. 110
Thursday, June 7, 2012

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

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0057]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Office of Operations Coordination and Planning—003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled ''Department of Homeland Security Office of Operations Coordination and Planning–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective June 7, 2012.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Michael Page (202–357–7626), Privacy Point of Contact, Office of Operations Coordination and Planning, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) Office of Operations Coordination and Planning (OPS) published a notice of proposed rulemaking (NPRM) in the **Federal Register**, on November 15, 2010 at 75 FR 69604, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is titled, ''DHS/OPS–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records.'' The DHS/OPS–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion system of records notice (SORN) was published concurrently in the **Federal Register** on November 15, 2010 at 75 FR 69689, and comments were invited on both the NPRM and SORN.

Public Comments

DHS/OPS received three comments on the NPRM and three comments on the SORN for a total of six comments.

Comments on the NPRM

DHS/OPS received three comments on the NPRM. The first NPRM comment was from an anonymous individual seeking to state an opinion and requested no specific action or amendment related to the proposed rulemaking. The second NPRM comment was from an anonymous individual supporting the proposed rulemaking. The third NPRM comment was from a public interest organization that filed comments on the NPRM and SORN jointly in a comingled fashion and the comments on the SORN and NPRM are addressed as the second SORN comment below.

Comments on the SORN

DHS/OPS also received three comments on the SORN. The first SORN comment was from a media and academic partnership and included the following points: (1) It is difficult for the public to comment on the merits of the proposed rulemaking because so little information is available on fusion centers; (2) the government has failed to make available information requested under FOIA (an issue unrelated to this proposed rulemaking); (3) the proposed system does not adequately protect the public's privacy; (4) the new system will impose significant costs (an issue unrelated to this proposed rulemaking); (5) there is fusion center mission creep (an issue unrelated to this proposed rulemaking); and (6) there are privacy violations in fusion center guidelines (an issue unrelated to this proposed rulemaking). Many of the points raised by this commenter were unrelated to the proposed rulemaking, but the Department will address the above comments in whole. The commenter states that there is ''insufficient public information available on fusion centers for the public to adequately evaluate the effect of the proposed information collection system'' and ''the expense, mission creep, and privacy effects of the proposed database.'' In response to the issues raised by this commenter regarding fusion centers: (1) Information on fusion centers can be found on the Department's Web page at *www.dhs.gov* and in the DHS/ALL/PIA–011 Department of Homeland Security State, Local, and Regional Fusion Center Initiative Privacy Impact Assessment (PIA), December 11, 2008. This PIA provides a detailed discussion and privacy analysis on fusion centers and is available at *www.dhs.gov/privacy;* (2) the Department is and will continue to be responsive to FOIA requests. FOIA requests may be sent to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528; and (3) the privacy protections of information collected by fusion centers is covered by privacy policies of the fusion center. This DHS/OPS–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records is not the system of records exclusively covering information collections by fusion centers. This system of records would only cover information sent to the NOC by fusion centers, as well as other information collections beyond information sent to the NOC by fusion centers. Components of the Department receiving information from fusion centers use their own SORNs on a component-by-component basis and those SORNs can be found at *www.dhs.gov/privacy.* Each of the officially-designated and operational fusion centers have privacy policies that have been found by DHS to be ''at least

as comprehensive'' as the federal guidelines for protecting privacy within the Information Sharing Environment. Many of these policies are published on the National Fusion Center Association's public Web site at *http://www.nfcausa.org.* With respect to points 4, 5, and 6, above these are not related to this rulemaking. This NPRM and SORN do not seek to establish a new information technology (IT) database or to collect new information; rather this NPRM and SORN provide transparency to OPS practices by pulling together a variety of already existing records for a single purpose under a specific authority. It is also worth clarifying that this NPRM and SORN do not exclusively cover fusion centers for the Department, although the National Operations Center (NOC) may receive information from a fusion center. Such information may be covered by this NPRM and SORN. Neither the NOC nor OPS is a ''Fusion Center.'' The purpose of this system of records and its authority are mandated by law (6 U.S.C. 321d) to be ''the principal operations center for the Department of Homeland Security.'' Through the NOC, OPS provides real-time situational awareness and a common operating picture to the Department's leadership and senior management.

The second SORN comment was from a public interest research center that filed comments on the NPRM and SORN jointly in a comingled fashion and both are addressed in this section. The commenter raised concerns about: (1) Unusually broad purpose; (2) unusually broad authority and sharing; (3) contradictory statements about fusion centers as state and local entities (an issue unrelated to this proposed rulemaking); (4) taking Privacy Act exemptions where disclosure from the individual is withheld; (5) removing the use of the Privacy Act exemptions that address ''relevant and necessary;'' (6) the new fusion center PIA (an issue unrelated to this proposed rulemaking); and (7) the new suitable retention and disposal standards. Finally, the commenter recommends the creation of an independent oversight mechanism to prevent mission creep and uphold reporting requirements (an issue unrelated to this proposed rulemaking).

In response to the comment on broad purpose, authority, and sharing of this system of records (1 and 2 above), the Department notes that the NOC is authorized by law to be ''the principal operations center for the Department of Homeland Security,'' (6 U.S.C. 321d) and this system of records allows the NOC to fulfill this mission. Through the NOC, OPS provides real-time situational awareness and a common operating picture to the Department leadership and senior management. The NOC operates 24 hours a day, seven days a week, and 365 days a year and coordinates information sharing to help deter, detect, and prevent terrorist acts and to manage domestic incidents. With regards to point 3, DHS is not being contradictory on the nature of fusion centers, which are state and local entities. This system of records may maintain information received from fusion centers, but only when that information is sent to the NOC by fusion centers. Additional information on fusion centers can be found on the Department's Web page at *www.dhs.gov* and in the DHS/ALL/PIA–011 Department of Homeland Security State, Local, and Regional Fusion Center Initiative PIA, December 11, 2008, which addresses privacy analysis on fusion centers and is available at *www.dhs.gov/privacy.*

DHS' decision to take exemptions to the Privacy Act (point 4) are appropriate given the law enforcement nature of the collection and the concern that providing access may give individuals the ability to contravene legitimate law enforcement activities. DHS also notes that as a matter of policy it reviews all Privacy Act requests to determine whether or not it can provide access to the information. With regards to the comments concerns regarding exemptions from the ''relevant and necessary'' standard (point 5), sufficient means do exist to verify the accuracy of the data and ensure that incorrect data is not used against an individual. System users are trained to verify information obtained from the NOC before including it in any analytical reports. Verification procedures include direct queries to the source databases from which the information was originally obtained, queries of commercial or other government databases when appropriate, and interviews with individuals or others who are in a position to confirm the data. These procedures mitigate the risk posed by inaccurate data in the system and raise the probability that such data will be identified and corrected before any action is taken against an individual. In addition, the source systems from which the NOC obtains information may, themselves, have mechanisms in place to ensure the accuracy of the data prior to the information being shared, as outlined in the ISE.

The commenter expressed concern about the DHS/ALL/PIA–011 Department of Homeland Security State, Local, and Regional Fusion Center Initiative PIA, December 11, 2008 (point 6) and whether it was accurate given this system of records notice. As noted above, this system of records does not cover fusion centers, but may receive information from fusion centers if it is relevant to the purpose of this system of records and the mission of OPS. This PIA is currently under review for possible update as required by law. The commenter expressed concern about the records retention and disposal standards. DHS has an updated records schedule approved by NARA for records contained in this system of records, Steady state (normal day-to-day) records are kept for five years and destroyed. All records that become part of a Phase 2 or 3 event are transferred to the National Archives five years after the event or case is closed for permanent retention in the National Archives (NARA schedule N1–563–11–010).

Finally, the commenter recommended that the Department establish additional independent oversight for fusion centers beyond what currently exists at the Department. This is outside the purview of this rulemaking.

The third and final comment is from a private individual. This individual wrote to the Department to explain the circumstances related to this individual's arrest by a state law enforcement authority resulting in what this individual believes to be faulty information received from a state intelligence center. The individual goes on to detail issues related to the state's fusion center as it applied to this individual's case. The individual requested no specific action or amendment related to the proposed rulemaking and the individual's comments were unrelated to the proposed rulemaking.

After careful consideration of public comments, the Department will implement the rulemaking as proposed, additionally the Department will not update the Systems of Records Notice.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 et seq.; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''68'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

68. The DHS OPS–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS OPS–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records is a repository of information held by DHS to serve its several and varied missions and functions. This system also supports certain other DHS programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS OPS–003 Operations Collection, Planning, Coordination, Reporting, Analysis, and Fusion System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. This system is exempted from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3): 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access and Amendment) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: June 1, 2012.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–13778 Filed 6–6–12; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0030]

RIN 0579–AD43

Horse Protection Act; Requiring Horse Industry Organizations To Assess and Enforce Minimum Penalties for Violations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the horse protection regulations to require horse industry organizations or associations that license Designated Qualified Persons to assess and enforce minimum penalties for violations of the Horse Protection Act (the Act). The regulations currently provide that such penalties will be set either by the horse industry organization or association or by the U.S. Department of Agriculture. This action will strengthen our enforcement of the Act by ensuring that minimum penalties are assessed and enforced consistently by all horse industry organizations and associations that are certified under the regulations by the U.S. Department of Agriculture.

DATES: *Effective Date:* July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Rachel Cezar, Horse Protection National Coordinator, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; (301) 851–3746.

SUPPLEMENTARY INFORMATION:

Background

In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act or the HPA, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. The regulations in 9 CFR part 11, referred to below as the regulations, implement the Act.

In the Act, Congress found and declared that the soring of horses is cruel and inhumane. The Act states that the term ''sore'' when used to describe a horse means that the horse suffers, or can reasonably expect to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving as a result of:

- An irritating or blistering agent applied, internally or externally, by a person to any limb of a horse,
- Any burn, cut, or laceration inflicted by a person on any limb of a horse,
- Any tack, nail, screw, or chemical agent injected by a person into or used by a person on any limb of a horse, or
- Any other substance or device used by a person on any limb of a horse or a person has engaged in a practice involving a horse.

(The Act excludes therapeutic treatment by or under the supervision of a licensed veterinarian from the definition of ''sore'' when used to described a horse.)

The practice of soring horses is aimed at producing an exaggerated show gait for competition. Typically, the forelimbs of the horse are sored, which causes the horse to place its hindlimbs further forward than normal under the horse's body, resulting in its hindlimbs carrying more of its body weight. When the sored forelimbs come into contact with the ground, causing pain, the horse quickly extends its forelimbs and snaps them forward. This gait is known as ''the big lick.''

Soring is primarily used in the training of Tennessee Walking Horses,

racking horses, and related breeds. Although a gait similar to ''the big lick'' can be obtained using selective breeding and humane training methods, soring achieves this accentuated gait with less effort and over a shorter period of time. Thus, Congress found and declared that horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore. Congress further found and declared that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce.

Section 4 of the Act (15 U.S.C. 1823) directs the Secretary of Agriculture to prescribe, by regulation, requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction (referred to below as ''show management'') of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. The intent of Congress and the purpose of this provision is to encourage horse industry self-regulatory activity and to allow show management to have the benefit of certain limits upon their liability under the Act if they employ a Designated Qualified Person (DQP) to detect and diagnose soring and to otherwise inspect horses for the purpose of enforcing the Act. The Secretary is further authorized under section 9 of the Act (15 U.S.C. 1828) to issue such rules and regulations as he deems necessary to carry out the provisions of the Act.

Under the regulations, DQPs are trained and licensed to inspect horses for evidence of soreness or other noncompliance with the Act and the regulations in programs sponsored by horse industry organizations or associations (HIOs). An HIO's DQP program must meet the requirements of § 11.7 of the regulations, which include requirements for licensing, training, recordkeeping and reporting, and standards of conduct, among other things. The U.S. Department of Agriculture (USDA) certifies and monitors these programs.

DQPs conduct inspections according to procedures set out in § 11.21 of the regulations. Paragraph (d) of § 11.21 requires the certified DQP organization (i.e., the HIO) under which the DQP is licensed to assess appropriate penalties for violations, as set forth in the rule book of the certified program under which the DQP is licensed, or as set forth by the USDA. In addition to the DQP's report to show management, the HIO must also report all violations to show management.

On May 27, 2011, we published in the **Federal Register** (76 FR 30864–30868, Docket No. APHIS–2011–0030) a proposal [1] to amend the regulations to require HIOs that license DQPs to assess and enforce minimum penalties for violations of the Act. We stated that the proposal was in response to an audit report [2] issued in September 2010 by the USDA's Office of the Inspector General (OIG) regarding the Animal and Plant Health Inspection Service's (APHIS) administration of the Horse Protection Program and the Slaughter Horse Transport Program. The audit found that APHIS' program for inspecting horses for soring is not adequate to ensure that these animals are not being abused. Due to this ineffective inspection system, the report stated, the Act is not being sufficiently enforced, and the practice of abusing show horses continues. One of the recommendations in the audit report was that APHIS develop and implement protocols to more consistently negotiate penalties with individuals who are found to be in violation of the Act.

We stated that requiring HIOs to implement a minimum penalty protocol would strengthen our enforcement of the Act by ensuring that minimum penalties are assessed and enforced consistently by all HIOs that are certified under the regulations pursuant to section 4 of the Act.

We solicited comments concerning our proposal for 60 days ending July 26, 2011. We received 28,249 comments by that date. These included 27,349 substantively identical form letters submitted by individuals who commented through an animal welfare advocacy group. The comments were from HIOs and gaited horse organizations, other horse organizations, veterinary associations, horse and animal welfare advocacy groups, participants in the horse industry, and the general public.

Many commenters supported the proposed rule and increased enforcement of the Act in general, stating that the horse industry had failed to eliminate soring. Some of these commenters noted that the proposed rule would only affect people who sore horses, not the entire Tennessee Walking Horse industry, and stated that measures such as those we proposed are necessary to ensure that horses are not sored.

Other commenters who supported the proposed rule stated that the HIOs that have not adopted the minimum penalty protocol have created an economic disadvantage for the HIOs who have done so. One commenter stated that requiring less stringent penalties has become a way for HIOs to attract business. These commenters stated that the proposed rule would ensure that soring is properly deterred and punished and that requiring uniform minimum penalties would benefit owners and trainers who reject soring and exhibit sound horses, consistent with the intention of the Act.

Most of the commenters who supported the proposed rule also recommended that we require penalties more stringent than those we had proposed; these comments are discussed below under the heading ''Requests for Increases in Proposed Penalties and Addition of Penalties for Other Violations.''

The remaining comments are discussed below by topic.

Current HIO Enforcement of the Act

Of the commenters who opposed the proposed rule, several stated that minimum mandatory penalties are not necessary because the current HIO system is working to prevent sore horses from being shown, exhibited, sold, or auctioned. The commenters stated that current DQP inspections under the HIOs are rigorous and effective. Some stated that the walking horse industry has improved its compliance dramatically in the past 2 to 3 years, with strong enforcement from certain HIOs. Commenters cited high compliance rates for horses entered at DQP-inspected shows.

Several commenters stated that the current penalties that HIOs assess and enforce are effective. Another commenter stated that there is no uncertainty about penalties under the current system, as each HIO has a published penalty structure available to all participants.

Another commenter stated that despite any progress, much work remains to accomplish the goal of eliminating soring, and that the compliance rates cited by other commenters are meaningless for several reasons: (1) The HIOs themselves are reporting the compliance rates; (2) the overall rate includes HIOs committed to the sound, unsored horse along with other HIOs, artificially inflating the compliance rate for the latter; (3) the overall rate does not include horses that are brought to shows, exhibitions, sales, and auctions but not presented for inspection when USDA is present; and (4) the overall rate includes horses that got through inspection by use of drugs.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0030.*

[2] Available at *http://www.usda.gov/oig/webdocs/33601-02-KC.pdf.*

We have determined that it is necessary to establish minimum penalties to be assessed and enforced by HIOs in this final rule. As discussed in the proposed rule, the OIG audit found that APHIS' program for inspecting horses for soring, specifically the industry self-regulation carried out by DQPs trained by and operating under HIOs that are certified under the regulations, has not been adequate to ensure that these animals are not being abused. The OIG audit indicated that over 30 years of industry self-regulation through the DQP program has failed to eliminate the cruel and inhumane practice of soring, thus necessitating APHIS action to make the industry's self-regulatory efforts more effective.

The compliance rates cited by some commenters are not in and of themselves proof of the effectiveness of HIO enforcement of the Act, for many of the reasons cited by the last commenter. In addition, focusing on compliance rates obscures the fact that substantial numbers of horses are still found to be in violation of the Act each year, meaning that HIO enforcement has not been sufficient to eliminate the cruel and inhumane practice of soring.

One commenter stated that HIO penalties are appropriate and set based on years of experience and the severity of the violation. This commenter stated that DQPs do a better job of enforcement when a single DQP's inspection results in a smaller penalty, because the penalties that would be enforced would not potentially put a person out of business or shut down a training facility that employs several people.

As documented in the OIG audit, DQPs issue substantially more violations when APHIS VMOs are present than when they are not, suggesting that high compliance rates achieved at shows where only HIO DQPs are present may not reflect a decreased prevalence of soring. As this differential exists under the current HIO penalty structures, we do not believe that HIOs with less stringent penalties than those we proposed are ensuring the freer issuance of violations.

One commenter stated that the OIG audit predates the recent increase in HIO enforcement of the Act and that the HIOs currently enforce the Act effectively. Another stated that the OIG audit does not fairly represent the progress the industry has made in the last decade.

The OIG audit was based on data from several years, including a review of show reports from the 2008 season and site visits conducted in 2008. As noted earlier, the conclusions of the audit indicate that over 30 years of industry self-regulation through the DQP program has failed to eliminate the cruel and inhumane practice of soring. Since 2008, our experience in administering the Horse Protection Program does not indicate that there has been a significant change in the circumstances described in the OIG audit.

Many commenters stated that the penalties currently assessed by HIOs exceed those in the Act. (Conversely, two commenters stated that the proposed penalties far exceed those mandated in the Act.)

Regardless of whether the penalties imposed by HIOs exceed those in the Act, the information and data discussed in the proposed rule and directly above indicate that those penalties are not successfully achieving the goal of the DQP and HIO program, which is to end the cruel and inhumane practice of soring. Requiring all HIOs to assess and enforce minimum penalties for violations of the Act will ensure that all HIOs are operating in a consistent manner and will enhance the effectiveness of the Horse Protection Program.

Requiring HIOs To Assess and Enforce Minimum Penalties in the Context of the Act

Several commenters stated that the Department does not have the authority to change or modify the penalties in the Act by establishing a minimum penalty protocol in the regulations.

The Act sets out criminal and civil penalties for violations of the Act in section 6 (15 U.S.C. 1825). This section gives the Department authority to pursue criminal and civil penalties against those who violate the Act.

The DQP program, in contrast, was established in the regulations pursuant to section 4 of the Act in order to encourage horse industry self-regulatory activity and to allow show management to have the benefit of certain limits upon its liability under the Act. In addition, APHIS has the authority under section 9 of the Act to issue regulations that impose whatever requirements on the HIOs that APHIS determines to be necessary to enforce the Act and the regulations.

When the DQP program was established over 30 years ago, we granted a formal role in the regulations to HIOs in order to continue encouraging horse industry self-regulatory activity. The requirements for HIOs were promulgated pursuant to section 4 of the Act and thus are within APHIS' authority under the Act. Over the years, the role of HIOs has expanded to include assessing and enforcing penalties for violations of the Act, in accordance with § 11.21(d) of the regulations. However, the industry self-regulatory activity, and in particular the penalties HIOs have assessed and enforced under the regulations, have not been sufficient to end the cruel and inhumane practice of soring.

One issue that has made the HIO penalties less effective than they could have been is the discrepancies that have existed among the penalties assessed and enforced by HIOs for certain offenses, resulting in inconsistent enforcement of the Act. To ensure that the horse industry is effectively working to eliminate the cruel and inhumane practice of soring, in accordance with section 4 of the Act and with the original purpose of the regulations, this final rule requires HIOs to assess and enforce minimum penalties for violations of the Act. The penalties we are requiring HIOs to assess and enforce in this final rule do not exceed the civil penalties provided in the Act, and this final rule does not change the penalties provided in the Act.

One commenter quoted paragraph (c) of section 4 of the Act, which states that the Secretary shall prescribe by regulation requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing the Act. The commenter stated that this language indicates that industry inspectors may only ''detect,'' ''diagnose'' and ''inspect,'' and does not provide industry inspectors with the authority to impose any agency penalty whatsoever.

Similarly, two other commenters stated that, because the Act prohibits showing or exhibiting, entering for the purpose of showing or exhibiting, or selling, auctioning, or offering for sale any horse that is sore, all that is required under the Act is that a DQP inspect for soring, notify management when a horse is sore, and provide the appropriate reports. Therefore, these commenters stated, the proposal to require HIOs to assess and enforce minimum penalties is an effort to circumvent the Act.

Some commenters stated that the language of the Act only allows the Secretary to assess and enforce penalties and does not give the Secretary the authority to impose penalties through any other means, including a private organization such as an HIO. One commenter stated that the provisions of paragraph (b) of section 6 show that any penalty structure that an HIO implements is strictly voluntary, although the HIOs have always felt it

was in the best interest of the Act to have a penalty structure in place to deter soring. Another commenter stated that the HIOs that currently assess and enforce penalties do so through the power given to them by the exhibitors, and that the Department cannot mandate penalties to be enforced by a private corporation.

Section 9 of the Act authorizes the Secretary to issue such rules and regulations as are deemed necessary to carry out the provisions of the Act. As discussed earlier, the Act itself does not prescribe the creation of HIOs; the Department decided to create them as DQP licensing authorities to further industry self-regulation towards the goal of eliminating the cruel and inhumane practice of soring. The regulations in § 11.21(d) have long indicated that HIOs shall assess appropriate penalties for violators, as set forth in their rulebooks or as set forth by the Department. This final rule sets forth those penalties that we have determined to be appropriate and necessary to eliminate soring, which the HIOs have failed to do. Therefore, this final rule is within the authority granted to the Secretary by the Act.

HIOs that do not wish to cooperate in the effort to eliminate soring by imposing the minimum penalties required in this final rule may withdraw from certification; if an HIO refuses to implement the minimum penalties, we will initiate proceedings to decertify the HIO, as described in § 11.7(g).

Several commenters stated that requiring HIOs to assess and enforce penalties would be inconsistent with the Act's requirement, in paragraph (b) of section 6, that no civil penalty will be assessed unless such person is given notice and opportunity for a hearing before the Secretary of Agriculture with respect to such violation. (Paragraph (b) also sets out a process for review by a court of appeals.) Many of these commenters stated that it was Congress' intent to require the due process described in paragraph (b) to be followed before the imposition of a penalty, and that the proposed rule would take away individuals' rights to due process. Similarly, many commenters stated that HIOs, as private organizations that were established to cooperate with APHIS in the enforcement of the Act, are not required to provide due process for violators.

Some commenters focused on what they perceived to be the HIOs' roles as state actors (organizations acting on behalf of the Government and thus required to provide due process) in the context of the proposed rule's minimum penalty requirements. Two commenters stated that the law is clear that the initial stages of a state-action disciplinary proceeding are delegated to a private party (such as an HIO), the agency that delegated the authority must grant a *de novo* review of the decision, i.e., a new trial on the merits. One of these commenters additionally stated that the Department would likely be held liable for the actions of HIOs in the imposition of such penalties and any corresponding deprivation of rights of the individuals affected.

One commenter expressed concern that people who show in front of multiple HIOs during the course of a show season would be required to submit to each HIO's appeal process without being able to appeal the decisions to the Secretary or a court of law.

As described earlier, section 4 of the Act provides the Secretary with authority to establish requirements for the appointment of DQPs by management, as Congress envisioned that both public and private horse inspectors would monitor compliance with the Act. Thus, the horse industry in general and HIOs specifically have been playing a role in enforcing the HPA since its inception. Over the years, the role of HIOs has expanded to include assessing and enforcing penalties for violations of the Act. However, we maintained the authority to intervene if the DQPs and the HIOs that licensed the DQPs were not effectively working towards the goal of eliminating the cruel and inhumane practice of soring. This final rule responds to problems associated with discrepancies among HIO penalties by requiring consistent penalties, thus enhancing the effectiveness of the industry's self-regulating efforts.

Paragraph (e) of § 11.25 in this final rule requires each HIO to have an appeals process in its rulebook that is approved by the Department. We will only approve appeals processes that give notice and opportunity for a hearing and that ensure a fair hearing. In addition, we will monitor the appeals processes to ensure that they are working effectively. This will ensure that persons who have penalties assessed by an HIO will have recourse to challenge the penalty within the HIO structure, and thus fulfills the due process requirements of the Act. As currently occurs when HIOs assess and enforce penalties, persons who do not agree with the HIO's decision will be free to bring a suit against the HIO itself.

HIOs currently provide all these functions in accordance with the regulations in § 11.21(d). We do not expect any of these processes or functions to change with the promulgation of minimum required penalties; we are simply specifying penalties in accordance with § 11.21(d).

Inspection Procedures

DQPs find violations of the Act by inspecting horses, and thus penalties will be assessed and enforced on the basis of the results of these inspections. As mentioned earlier, § 11.21 of the regulations sets out inspection procedures for DQPs. Under this section, a DQP must walk and turn the horse being inspected and determine whether the horse moves in a free and easy manner and is free of any signs of soreness. The DQP must also digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks, while observing for responses to pain in the horse. Any pain would indicate that the horse is sore.

The DQP also examines horses to determine whether they are in compliance with the scar rule in § 11.3, and particularly whether there is any evidence of inflammation, edema, or proliferating granuloma tissue. Under § 11.3, the anterior and anterior-lateral surfaces of a horse's pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and other bilateral evidence of abuse indicative of soring; the posterior surfaces of the pasterns (flexor surface), including the sulcus or ''pocket,'' may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation. If the horse is not free of these symptoms, it is considered to be sore under § 11.3.

The DQP may also carry out additional inspection procedures as he or she deems necessary to determine whether the horse is sore.

In order to ensure that the Act is being properly enforced, APHIS sometimes sends veterinary medical officers (VMOs) to conduct inspections of horses at horse shows, exhibitions, sales, and auctions, whether or not the show, exhibition, sale, or auction is affiliated with an HIO. VMOs follow the same inspection protocol as DQPs do and serve as an independent check on the effectiveness of DQP inspection. In addition, where available, VMOs use thermography to assess whether areas in a horse's forelimbs may be inflamed in a manner characteristic of soring, or x-ray examination to determine whether a horse's bones show signs of stress indicative of soring.

Several commenters opposed the imposition of penalties for what they stated are violations based on subjective inspections, which are often the subject of differences of opinion among VMOs, DQPs, and other parties. These extend to differences of opinion regarding one horse participating in different classes at a horse show. Several added that the evidence from such inspections would be insufficient to obtain convictions in a court of law, which is why, the commenters stated, the USDA has proposed the minimum penalties to be assessed and enforced by HIOs.

Numerous commenters stated that mandatory penalties should not be imposed until an objective scientific determination of when a horse is sore can be made. Several stated that such determinations are not possible with digital palpation, thermography, or x-ray analysis, all of which are subject to inconsistencies in application and interpretation. Several stated that palpation is conducted with the primary goal of inducing a response, or that it is bound to induce a response in horses that are generally skittish at inspection. Others stated that the scar rule is also applied inconsistently.

A few commenters stated that inspections of sound horses do not find any violations. One commenter stated that some HIOs and their DQPs do not follow the standards of the USDA, thus producing inconsistent results in inspections. Another commenter stated that a horse that has been trained in order to develop the natural abilities of the horse, without soring, would not be borderline with respect to compliance with the Act and would thus not be diagnosed differently by different VMOs and DQPs. This commenter stated that the more common problem with respect to subjectivity of digital palpation is DQPs not applying enough pressure during palpation and thus allowing sore horses to be shown, exhibited, sold, or auctioned. Similarly, the commenter stated, the Department has provided clear guidance on the scar rule and it is not difficult to determine whether a horse is in or out of compliance.

Digital palpation is a well-accepted and highly reliable method of determining whether a horse is sore and thus in violation of the Act. In addition, the other inspection methods we use, including examination of the horse's gait, thermography, and x-ray analysis, all have value and are reliable as well, and can provide additional information about whether a horse is sore that may not be available through digital palpation, thus contributing to our effective enforcement of the Act. We welcome suggestions from the public on other potential methods of determining whether horses are sore, and we continue to work with researchers to develop additional methods.

Some of the differences in opinion between DQPs and VMOs that the commenters discussed may be due to incorrect application of the inspection methods. This is why we help conduct DQP training to ensure that all DQPs are aware of the correct procedures for performing inspection. Information on conducting digital palpation is also available in guidance we provide to HIOs. With respect to the scar rule specifically, we train DQPs and VMOs every year to ensure that the scar rule is consistently interpreted, and we make guidance on its interpretation available to anyone who requests it.

The goal of digital palpation is to determine whether pressure applied to the forelimbs of the horse from knee to hoof causes pain. Such pain indicates that the horse is sore. APHIS VMOs conduct palpation with this goal in mind.

A recent study [3] indicates that the amount of pressure applied during digital palpation is not enough to elicit a response in a horse that has not been sored. Under this final rule, if a horse is skittish at inspection, the horse would likely be determined to be unruly under paragraph (d) of § 11.25 and thus would be excused from the class, but would not be determined to be sore.

Based on these considerations, we have determined that the inspection methods that APHIS trains DQPs to administer provide evidence that is sufficiently reliable to serve as the basis for assessing a penalty under this final rule.

Shows Not Affiliated With an HIO

Many commenters expressed concern that requiring HIOs to assess and enforce minimum penalties would encourage owners and trainers to show their horses at shows whose management does not appoint a DQP to perform inspections to ensure that sore horses are not shown. As noted earlier, at such shows, show management assumes liability under the Act for any sore horses that are shown, exhibited, sold, or auctioned. These shows are often referred to as ''unaffiliated'' shows because the show is not affiliated with an HIO that provides a DQP to conduct inspections.

Many of these commenters stated that increasing numbers of horses were being shown at unaffiliated shows, and the proposed rule would accelerate this trend. One commenter stated that there are currently a minimum of 400 unaffiliated shows each season.

Some of these commenters stated that horses shown at unaffiliated shows would not pass the inspections conducted at HIO-affiliated shows. One commenter stated that individuals who have been suspended under the current HIO penalties have shown at unaffiliated shows.

All of these commenters stated that APHIS should emphasize enforcement of the Act at unaffiliated shows, and most stated that inspections at unaffiliated shows should be emphasized in place of finalizing the proposed minimum penalty protocol. Many commenters stated that APHIS inspections at unaffiliated shows have been minimal or nonexistent. One commenter stated that the Department has never pursued a case against the management of an unaffiliated show.

One commenter stated that the penalty protocol should be implemented along with an increased emphasis on enforcement at unaffiliated shows, to best effectuate the purpose of the Act.

We agree with the last commenter. We plan to continue inspections of nonaffiliated shows; at the same time, we are promulgating the minimum penalty protocol in this final rule.

Contrary to the suggestions of many commenters, we do regularly attend unaffiliated shows. Through October 11, 2011, we attended 12 unaffiliated shows, out of a total of 74 shows attended to that point in that year. During the 2010 season, we attended 6 unaffiliated shows out of a total of 59 shows attended. Lists of all shows we have attended in the last 5 years, including unaffiliated shows, are available on the Horse Protection Web site.[4] When evidence warrants, we investigate unaffiliated shows to determine whether prosecution under the Act is warranted. We are planning more of these enforcement activities in the future, as attending unaffiliated shows is essential to the effective enforcement of the Act.

It is also essential that we attend shows that are affiliated with HIOs in order to ensure that the DQPs at those

[3] Haussler, K. K., T. H. Behre, and A. E. Hill. Mechanical nociceptive thresholds within the pastern region of Tennessee Walking Horses. Equine vet. J. (2008) 40 (5) 455–459.

[4] Lists of shows attended during the 2007 through 2010 seasons are available under the heading ''Veterinary Medical Officer (VMO) Annual Show Report'' at *http://www.aphis.usda.gov/animal_welfare/hp/hp_pubs_reports.shtml.* The list of shows attended through October 11, 2011, is available at *http://www.aphis.usda.gov/animal_welfare/downloads/hp/USDA%202011%20HP%20Activity.pdf.*

shows are effectively enforcing the Act. Over 700 shows in the 2011 season were affiliated with an HIO. It is APHIS' responsibility to oversee the DQP program to ensure that the HIOs and their DQPs are working effectively to enforce the Act, in accordance with their self-regulatory responsibilities. As mentioned earlier, the OIG audit found the current program is not sufficient to prevent soring, and the audit found in particular that DQPs issue substantially more violations when APHIS VMOs are present than when they are not. This indicates a need for continued oversight.

Suspensions

Parties Required To Be Suspended

Paragraph (b) of proposed § 11.25 described various conditions applying to suspensions under the minimum penalty protocol. For violations for which we proposed to require suspensions in § 11.25(c), we proposed in paragraph (b)(1) to require the suspension of individuals including, but not limited to, the owner, manager, trainer, rider, custodian, or seller, as applicable, who are responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse in a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction.

Many commenters objected to suspending the owner, manager, trainer, rider, and custodian for the same violation. Some trainers commented that they exhibit several horses every weekend and could be subject to a suspension penalty if any one of them is found to be in violation of the Act or the regulations. A few commenters stated that owners should not be held responsible for something done to their horses, as owners cannot be with their animals continuously and thus cannot know everything done to an animal while it is being trained.

In addition, some commenters asked us to adjust the language of proposed paragraph (b)(1). One commenter said that words like ''can'' and ''could'' need to be replaced with words like ''will'' and ''shall.'' Another stated that we should change the proposed text to require the suspension of ''all individuals, including but not limited to * * *''

A third commenter stated that the proposed language was at best vague and provides almost no guidance to HIOs about who should be subject to sanctions for any particular violation of the Act. This commenter recommended that we adopt language from the 2007–2009 HPA Operating Plan,[5] which contained language specifying which individuals should be subject to penalties for various offenses.

Section 5 of the Act (15 U.S.C. 1824) prohibits transporting, showing or exhibiting, entering for the purpose of showing or exhibiting, or selling, auctioning, or offering for sale any horse which is sore. It also prohibits an owner from allowing the showing or exhibiting, entering for the purpose of showing or exhibiting, or selling, auctioning, or offering for sale any horse which is sore. Thus, requiring owners to be suspended is consistent with the Act. In addition, as trainers commonly are responsible for showing or exhibiting horses under their care, it is appropriate to require that they be suspended if they fill those roles.

The regulatory text we proposed in paragraph (b)(1) indicated that anyone who is responsible for showing a sore horse, exhibiting such a horse, entering or allowing the entry of such a horse in a show or exhibition, selling such a horse, auctioning such a horse, or offering such a horse for sale or auction must be suspended. We believe that listing the types of people who may be responsible for violations of the Act may have confused readers. In this final rule, we have rewritten paragraph (b)(1) to read as follows: ''For the violations listed in paragraph (c) of this section that require a suspension, any individuals who are responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse in a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction must be suspended. This may include, but may not be limited to, the manager, trainer, rider, custodian, or seller, as applicable. In addition, if the owner allowed any activity listed in this paragraph, the owner must be suspended as well.'' This is substantively equivalent to the proposed text but indicates more clearly that people must be suspended when they have violated the Act, not simply because they have a certain role with respect to a sore horse.

We understand that trainers often have multiple horses showing at any given time. However, if a trainer shows or exhibits multiple horses, or enters multiple horses for the purpose of showing or exhibiting, and a violation of the Act or the regulations is detected on any of those horses, the trainer should be suspended for at least the minimum period prescribed in § 11.25 for each violation. In addition, paragraph (b)(4) of § 11.25 requires multiple suspensions to be served consecutively, not concurrently. A trainer who sores a horse or otherwise violates the Act should be penalized for the violation to ensure that the Act is effectively enforced.

One commenter stated that APHIS has expressed concerns that the trainer who has committed a violation may not always be charged with that violation, and stated that the proposed suspensions would exacerbate that problem.

As discussed earlier, the trainer of a horse that is inspected and found to be sore or otherwise in violation of the Act will be suspended when he or she shows or exhibits that horse or has entered that horse for the purposes of showing or exhibiting it. The HIOs are responsible for correctly identifying the person who has shown, exhibited, or entered a horse when the HIOs enforce penalties. Concerns have been expressed to APHIS that trainers will name someone else as responsible for a horse that is in violation of the Act or the regulations in order to avoid being penalized themselves. We expect the HIOs to handle this problem as part of their commitment to enforcing the Act.

Transporters

In paragraph (b)(2), we proposed to provide that, if a horse is found to be bilaterally sore or unilaterally sore, in violation of the scar rule, or in violation of the prohibition against the use of foreign substances, the transporter of the horse may also be suspended if the transporter had reason to believe that the horse was to be shown, exhibited, entered for those purposes, sold, auctioned, or offered for sale.

Two commenters expressed concern that persons transporting horses would not know whether a horse they were transporting was sore or had a scar, and that those persons should not be subject to penalties.

Section 5 of the Act prohibits the shipping, transporting, moving, delivering, or receiving of any horse which is sore with reason to believe that such horse while it is sore may be shown, exhibited, entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale, in any horse show, horse exhibition, or horse sale or auction. The Act only makes an exception for shipping, transporting, moving, delivering, or receiving of any horse by a common or

[5] The Operating Plan, which is no longer in effect, was a document in which the Department agreed to allow HIOs to exercise initial enforcement authority, including assessing suspension penalties for certain violations, for horse shows, horse exhibitions, and horse sales and auctions that were affiliated with the HIOs.

contract carrier or an employee thereof in the usual course of the carrier's business or employee's employment unless the carrier or employee has reason to believe that such horse is sore. Therefore, our proposed language was consistent with prohibitions in the Act itself. It is appropriate to require suspensions for violations of the Act.

As proposed, paragraph (b)(2) did not directly parallel the language in the Act. We have rewritten paragraph (b)(2) in this final rule so that it more closely parallels the Act. We believe this will make it more clear that such suspensions are required due to violations of the Act.

Normally, a person will receive a penalty for transporting a sore horse if that person is also responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse in a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction. If a horse is found to be sore during preshow inspection and the horse is obviously lame or has open lesions, we would consider the transporter to have had reason to believe that the horse is sore and require the HIO to assess and enforce a penalty, even if the transporter was not responsible for one of the activities listed previously.

Activities Not Permitted During Suspensions

Proposed paragraph (b)(3) stated that a person who is suspended must not be permitted to show or exhibit any horse or judge or manage any horse show, horse exhibition, or horse sale or auction for the duration of the suspension.

Three commenters requested that we make changes to this language to expand the scope of activities that are prohibited for suspended persons. Two stated that we should adopt the language on this topic from the 2007–2009 Operating Plan. The Operating Plan stated:

> A person who has been suspended or disqualified as a result of an HPA violation shall not: (1) Enter a horse for the purposes of showing, exhibiting or selling at auction (''Enter a horse,'' as used in this section, shall mean to perform any of the activities that are required to be completed before a horse can actually be shown or exhibited); (2) show or exhibit a horse at a horse show, public auction, or exhibition such as a college football game or parade; (3) judge a horse show; (4) enter the show ring during the course of a horse show; (5) enter the inspection area or warm-up area where previously inspected horses are allowed to await ring or sale entry, during the course of a horse show or sale; (6) coach any trainer, owner, or exhibitor anytime during the show or exhibit; (7) transport horses to shows, exhibitions or public auctions; (8) prepare a horse on the sale, show, auction or exhibition grounds; or (9) serve as a horse show official. An HIO may employ its own procedures to ensure that such suspensions are enforced.

Another commenter stated that proposed paragraph (b)(3) should be changed to clearly prohibit anyone who has been suspended from participating at a horse show in any way other than as a spectator. The commenter stated that this language already exists in the 2010 Points of Emphasis (a guidance document we prepared for HIOs), but should be included in the regulations. Further, the commenter stated, the prohibition from participating should extend to include coaching via electronic or radio communication from the suspended party to anyone working with a horse on the grounds or riding it.

The language in proposed paragraph (b)(3) is taken from the Act (specifically, paragraph (c) of section 6). We believe it is appropriate to include similar language in the regulations. The activities described in the 2007–2009 Operating Plan are all included within the prohibition from showing or exhibiting any horse or judging or managing any horse show, horse exhibition, or horse sale or auction. The 2010 Points of Emphasis states that ''a violator on disqualification or suspension may only participate as a spectator at the horse show, horse exhibition, horse sale, or horse auction.'' Like the 2007–2009 Operating Plan, it goes on to describe specific parameters of this prohibition, all of which are included within the prohibitions in proposed paragraph (b)(3). We will make guidance regarding the activities in which people who are suspended may not participate available to HIOs after this final rule becomes effective, recognizing that any list of prohibited activities is not necessarily exhaustive.

Minimum Penalties

Paragraph (c) of proposed § 11.25 set out our proposed minimum penalties for each type of violation. We received several comments on the proposed penalties.

Dismissal of Horses

A few commenters stated that the only penalty that should be assessed when a horse is found to be in violation of the Act is that the horse should not be allowed to participate in the horse show, exhibition, sale, or auction at which it was inspected. These commenters stated that owners of horses would not continue to engage trainers whose horses were not allowed to participate after inspection, as bringing a horse to a show at which it was not then shown was costly. This process would remove the incentive to employ training methods and devices that violate the Act.

Section 4 of the Act states that the management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited which is sore or if the management has been notified by a DQP that the horse is sore. Thus, such a penalty is the absolute minimum necessary for shows and exhibitions to comply with the Act. All of the proposed minimum penalties include dismissal of the horse from the horse show, exhibition, sale, or auction at which it was presented for inspection, not just the class for which the inspection was conducted, to provide a further deterrent effect. (The only exception is for a fractious or unruly horse that cannot be inspected; such a horse has not been found to be in violation of the Act and may be reinspected for another class in the same horse show, exhibition, sale, or auction.) However, we have found that the minimal self-regulatory effort of simply dismissing the horse from the horse show, exhibition, sale, or auction has not provided sufficient incentive for individuals to eliminate the cruel and inhumane practice of soring horses. Therefore, we are requiring that HIOs assess and enforce minimum penalties for violations of the Act, to ensure consistent enforcement of the Act.

Requests for Increases in Proposed Penalties and Addition of Penalties for Other Violations

Several commenters asked generally for changes or additions to the penalty protocol. Some commenters asked that we add fines to the suspension penalties. Some commenters asked that we increase the suspension penalties as well, to provide a more substantial deterrent, and apply a minimum suspension penalty for all violations, rather than varying the penalties based on the type of violation. Some commenters addressed each violation listed in proposed paragraph (c) specifically and asked that the penalties be increased. One commenter stated that the horse on which a violation is found should be suspended for the duration of the suspension of the greatest duration of any other party related to that violation.

For horses that are found to be sore, we proposed to require the shortest suspension penalties for scar rule violations, with increased suspensions for unilateral sore violations and the longest suspensions for bilateral sore violations. A few commenters stated

that both unilaterally sored and bilaterally sored horses are considered ''sore'' for the purposes of the Act and thus equal penalties should be assessed and enforced in both situations. One commenter stated that unilateral sore violations are common to balance out the motion of the horse, and recommended that we add penalties for unilateral scarring as well. Another commenter noted that violations of the scar rule involve evidence of bilateral soring, and recommended that penalties for scar rule violations be set equal to those of a unilaterally sored horse.

We proposed to provide penalties that increase with each violation for bilateral sore, unilateral sore, and scar rule violations, but not for the violations of the equipment-related prohibitions in § 11.2. One commenter requested that we establish penalties that increase with each violation for such violations. In addition, we did not propose to require HIOs to assess and enforce suspension penalties when violations of § 11.2 are discovered before or during the show, exhibition, sale, or auction; several commenters requested that we require penalties for such violations.

Some commenters requested that we add required minimum penalties for violations other than those we included in the proposed rule. Some commenters stated that separate minimum penalties should be established for pressure shoeing, in which the sole of the horse's foot is made sensitive so that standing and walking cause the horse to be in constant pain. Some commenters stated that minimum penalties should be established for providing false information, for stewarding horses (i.e., inflicting pain to distract the horse during DQP or VMO inspection), and swapping horses (i.e., substituting a horse that has not passed inspection for one that has). Some commenters stated that the use of plastic wrap (a common means to apply prohibited substances to the horse's forelimbs) or overweight chains on show grounds should be subject to minimum penalties.

We recognize these commenters' desire to ensure that the minimum penalties established in § 11.25 are adequate to prevent soring and address possible violations of the Act comprehensively. In developing the minimum penalty protocol, APHIS took into account the civil and criminal penalties set forth in the Act; those penalty structures used in previous years, including those penalties included in previous Operating Plans; and input we received from industry stakeholders. The penalties we proposed are consistent with penalties that have historically been required by the industry in its self-regulating capacity, dating back to 2001. Our proposal was intended to reflect this historical understanding of penalties that are appropriate for violations of the Act and require the HIOs to assess and enforce consistent penalties while minimizing disruption to the industry.

For those reasons, we have decided to implement the minimum penalties as proposed. In coming show seasons, we will monitor the effectiveness of each specific penalty at deterring the violation for which the penalty is assessed and enforced. We will also monitor the occurrence of violations for which we did not propose to require a mandatory minimum penalty. If any of the penalties does not have the appropriate deterrent effect, or if we determine that there should be minimum penalties for other types of violations, we may propose changes in the future along the lines that these commenters suggest.

Some commenters asked that we require permanent suspension of all persons associated with violations of the Act, either after some number of violations or upon the first violation. Some commenters also asked us to require permanent prohibition of horses found to be in violation of the Act from participating in horse shows, exhibitions, sales, or auctions. Some commenters supported permanent prohibition particularly for horses found to be in violation of the scar rule, since the evidence of the violation will by definition continue to manifest itself permanently. Other commenters objected to the idea of permanent suspensions on people or permanent prohibitions on horses as unfair.

The Act does not provide APHIS with the authority to permanently disqualify horses that have been scarred from soring from competitions, nor does APHIS have the authority to permanently disqualify repeat violators of the Act. The disqualification provisions and penalty provisions are clearly enumerated in the Act. We would not consider it appropriate to require HIOs to enforce penalties exceeding those in the Act.

Disclosure

One commenter recommended that the parties involved in any and all soring violations be fully and immediately publicly disclosed.

We make lists of people who have been disqualified through USDA action and people who have been suspended through HIO action available on the Horse Protection Web site, at *http://www.aphis.usda.gov/animal_welfare/hpa_info.shtml.* We will continue to do so after this final rule becomes effective.

DQPs

One commenter supported penalties for DQPs who ignore violations.

Paragraph (f) of § 11.7 provides a process for the cancellation of a DQP's license in such circumstances.

Minimum Penalties

A few commenters expressed concern about APHIS' characterization of the penalties included in proposed paragraph (c) as minimum penalties. These commenters stated that the phrase ''minimum penalties'' implies an open door for more penalties to come later. One commenter asked what prevents us from requiring maximum penalties or from taking a horse away from an individual who has a penalty assessed for a minor infraction.

The word ''minimum'' in the description of the penalties in § 11.25 refers to the fact that HIOs are free to require penalties in excess of the penalties provided in this final rule.

As discussed earlier, the penalties we proposed are consistent with penalties that have historically been assessed and enforced by the HIOs for the violations listed in paragraph (c) of proposed § 11.25. However, we will monitor the effectiveness of the penalty protocol, and we may propose changes to the penalty protocol in the future. The Act does not give us the authority to take a horse away from an individual.

Increasing Penalties for Each Violation

The penalties for bilateral soring, unilateral soring, and violations of the scar rule in proposed paragraph (c) each included more severe penalties for repeat offenders, with the third and subsequent violations of these prohibitions earning the longest suspensions.

Some commenters objected to this approach. Two requested that there be no increase in penalties when a person commits a repeat violation (although one made an exception for a habitual offender). Others stated that violators should revert to first-offender status after remaining violation-free for a certain period of time, thus wiping the slate clean. Two of these commenters compared violations of the Act to traffic violations, stating that the latter are wiped clean after a period of time.

Another commenter asked whether violations would be erased after the suspension is served and any fine required by the HIO is paid. This commenter also asked how violations would accumulate.

Two commenters supported taking into account all violations in a violator's history when assessing penalties. One stated that providing a certain period of time after which previous violations no longer are considered in penalty assessment only matters to violators, especially to those who are or expect to be repeat offenders.

The penalties in this final rule increase in severity for repeat offenders to provide an additional deterrent effect for people who have already shown a willingness to violate the Act. Increasing penalties when a person repeatedly violates established requirements is a common practice to ensure compliance. Violations will accumulate for individuals as they are incurred; there will not be an opportunity to ''wipe the slate clean.'' We do not consider violations of the Act, which require deliberate effort on the part of the violator to inflict physical pain or distress, inflammation, or lameness on a horse, to be comparable to traffic violations.

One commenter objected to the notion that scar rule penalties should escalate with additional violations only if those violations are found on the same horse. This commenter stated that showing horses that are scarred is as significant a violation as showing horses that are bilaterally sore, and that it undermines the effectiveness of the scar rule if a violator is allowed to serially scar multiple horses without suffering increasing penalties.

The proposal did not state that penalties would escalate with additional violations only if those violations are found on the same horse. Penalties will escalate when an individual is found to have violated the scar rule multiple times, regardless of the horse on which the violation has occurred. For example, if a trainer's horse is found to be in violation of the scar rule and it is the trainer's first offense, the trainer will be suspended for 2 weeks. If a different horse trained by that trainer is found to be in violation of the scar rule, that would count as a second violation for that trainer and result in the trainer's suspension for 1 month. The same escalation process would apply for unilateral or bilateral sore violations. We appreciate the opportunity to clarify this point.

Suspensions for Unilateral Sore Violations

We proposed to require HIOs to assess and enforce penalties for unilateral sore violations in paragraph (c)(2) of the proposal. One commenter stated that the penalty for unilateral soring makes no sense because a person would not sore a horse on only one foot. Such a horse would be unlevel and would not perform properly, and thus would be excused anyway. Two commenters stated that a horse trainer who is soring a horse is not doing so only on one foot, and therefore a unilateral soring violation is more likely caused by the inspection process.

As another commenter noted, unilateral sore violations are often written when a second-leg examination is equivocal. Therefore, a unilateral sore violation may well be evidence of bilateral soring. In addition, masking agents are sometimes applied to a horse's forelimbs in an attempt to numb the horse to pain and thus pass inspection. A horse to which a masking agent has been applied may exhibit a different pain response in one forelimb than in the other. As horses that are unilaterally sore are considered to be sore under the Act, it is appropriate to provide minimum penalties that must be assessed and enforced by HIOs when such violations are found.

Suspensions for Scar Rule Violations

We proposed to require HIOs to assess and enforce penalties for scar rule violations in paragraph (c)(3) of the proposal. The proposed penalties were suspensions of 2 weeks for the first offense, 60 days for the second offense, and 1 year for the third offense. One commenter stated that requiring HIOs to assess and enforce a 1-year suspension penalty for a third violation of the scar rule was unfair, due to what the commenter characterized as the subjectivity and inconsistency in the interpretation of the scar rule. The commenter also opposed requiring penalties for unilateral sore violations, stating that such violations are subject to human factors as well as the reaction of the horse to any surrounding stimuli. The commenter recommended that we concentrate on bilateral sore violations.

As discussed earlier, we proposed to require suspensions for scar rule and unilateral sore violations that are shorter than those for bilateral sore violations, based on historical precedent. However, as both horses determined to be in violation of the scar rule and horses that are unilaterally sore are considered sore for the purposes of the Act, it is appropriate to require that HIOs assess and enforce penalties when these violations are discovered.

Open Lesions

One commenter stated that, in the Strategic Plan,[6] APHIS treated any open lesion, other than those from self-inflicted injures, as a violation of the scar rule. The commenter stated that there can be no more clear violation of the Act than a horse with an open lesion on the pastern or in the pocket. The commenter stated that it is at best unclear what penalties APHIS expects HIOs to assess and enforce when open lesions are found on a horse.

Open lesions fall within the scope of the Act only when they are indicative of soring. If a horse has open lesions and is also bilaterally or unilaterally sore, the appropriate penalties will apply; if a horse has bilateral open lesions that cause it to be considered sore under the scar rule, it will be penalized as a scar rule violation. As many HIOs have separate penalties for horses with open lesions, though, we should note that this final rule does not prevent HIOs from continuing to assess and enforce such penalties.

Suspensions for Equipment Violations

We proposed to require HIOs to assess and enforce penalties for violations of the equipment-related prohibitions in § 11.2(b)(1) through (b)(10) and (b)(12) through (b)(17) in paragraph (c)(5) of the proposal.

One commenter stated that exhibitors should not be suspended for all equipment violations. The commenter cited an example of a pleasure horse that had a bit that was one-half inch too long, not intentional and not hurting the horse.

The situation cited by the commenter would not have been a violation of the regulations, as the equipment-related prohibitions in § 11.2(b)(1) through (b)(10) and (b)(12) through (b)(17) contain no reference to the allowable length of bits. The prohibitions in those paragraphs prevent the use of equipment that has been shown to be used to sore horses. Therefore, we consider it appropriate and necessary to require that penalties be assessed and enforced for such violations.

Unruly or Fractious Horses

For an unruly or fractious horse that cannot be inspected in accordance with § 11.21, we proposed in paragraph (c)(8) to require the horse to be dismissed from the individual class for which it was to be inspected.

One commenter expressed concern that a fractious horse could result in a violation for which people could be banned for the rest of the show season.

As a fractious horse cannot be inspected in accordance with § 11.21,

[6] The Strategic Plan was designed to increase public-private cooperation in eliminating soring. The Operating Plans were created to fulfill the goals of the Strategic Plan.

we have no means of determining whether it is sore. Therefore, we did not propose to require any penalty for such horses beyond dismissal of the horse from the class for which it was being inspected. Such a horse could be entered into and inspected for other classes in the same horse show, exhibition, sale, or auction.

One commenter stated that unruly or fractious horses that cannot be inspected in accordance with § 11.21 should not be considered to be violating the Act, but should simply be deemed ''not qualified to compete.''

We agree with this commenter. Because an unruly or fractious horse cannot be inspected to determine whether it is in violation of the Act, it is inaccurate to describe such a situation as a violation of the Act. To separate the requirement that unruly or fractious horses be dismissed from the class for which they are being inspected from the violations of the Act listed in paragraph (c), we have moved the unruly or fractious horse requirement into a new paragraph (d), and we have designated proposed paragraphs (d) and (e) as paragraphs (e) and (f), respectively, in this final rule. We have also added a requirement in paragraph (a) that HIOs that license DQPs enforce the requirement in the new paragraph (d). With these changes, the regulations will require unruly or fractious horses to be dismissed from the class for which they are being inspected without characterizing such horses as being in violation of the Act.

Appeals

Proposed paragraph (d) of § 11.25 set out a requirement for an appeals process for penalties assessed by an HIO. We proposed to require that, for all appeals, the appeal must be granted and the case heard and decided by the HIO or the violator must begin serving the penalty within 60 days of the date of the violation.

One commenter stated that procedural delays often result in suspensions taking effect during the ''off'' season when horse shows are not held, which has no negative impact at all on the violators. This commenter suggested that we require HIOs to administer suspensions quickly after a violation has been found in order to further increase the deterrent effect of suspensions, and to require that the suspensions be served during the show season. Another commenter concurred with the recommendation that suspensions be served during the show season, and proposed defining the show season to exclude the months of December, January, and February.

We agree that it is important to administer suspensions quickly after a violation has been found. The requirements in paragraph (d) ensure that, absent an appeal, all penalties will be enforced within 60 days after the violation, which we believe is a reasonable amount of time to allow an appeal to take place if necessary.

After considering requiring suspensions to be served during the show season, we have determined that it would be difficult to track penalties across the different HIOs to ensure both that HIOs are adhering to the 60-day requirement in enforcing their suspensions and that some or all of the suspensions do not occur during the show season. In addition, the show season may vary among HIOs. We are making no changes to the proposed rule in response to these comments. However, we will monitor the HIOs' implementation of the minimum penalty protocol, and if we find that HIOs are attempting to game the system to ensure that a disproportionate number of suspensions are served outside the regular show season, we will change the regulations in order to ensure that the suspension penalties have a stronger deterrent effect.

We also proposed to require the HIO to submit to the Department all decisions on penalty appeals within 30 days of the completion of the appeal.

One commenter stated an assumption that data supporting the decision of the HIO regarding violators must be provided along with the decision; if this is not the case, the commenter recommended that we amend the proposed rule accordingly.

We did intend to require that the HIO provide evidence supporting its decision along with the record of the decision itself when a penalty is overturned on appeal. This will allow APHIS to review the effectiveness of the appeal process. We have added this requirement to the final rule.

HIO Penalties and Government Civil and Criminal Penalties

Some commenters stated that Federal enforcement proceedings for violations for which HIOs have assessed and enforced a penalty would put violators in double jeopardy.

Paragraph (e) of proposed § 11.25 stated that the Department would retain the authority to initiate enforcement proceedings with respect to any violation of the Act, including violations for which penalties are assessed in accordance with proposed § 11.25, and to impose the penalties authorized by the Act if the Department determines that such actions are necessary to fulfill the purpose of the Act and the regulations. In addition, proposed paragraph (e) indicated that the Department would reserve the right to inform the Attorney General of any violation of the Act or of the regulations.

We will pursue a Federal enforcement proceeding for a violation for which an HIO has assessed and enforced a penalty only when the HIO has not properly assessed and enforced the penalty or the violation is so egregious that it warrants additional enforcement. We must retain the ability to pursue enforcement proceedings in such circumstances to ensure that the Act is effectively enforced in cases where the industry self-regulatory mechanism is not sufficient.

The U.S. Constitution's prohibition against double jeopardy, which in this case refers to being retried for an offense for which one has been found not guilty, applies only to criminal trials. Penalties imposed by HIOs are not criminal penalties, and thus double jeopardy is not relevant to such penalties.

Economic Issues

The proposed rule was accompanied by an analysis of the rule's potential economic impacts, including its potential impact on small entities. The analysis concluded that, since the HIOs already administer their own individual penalty protocol for violations of the Act, the proposed rule is not expected to impose additional costs upon HIOs or show participants (other than those individuals who incur more severe penalties because of the rule). The analysis accompanying the proposed rule stated that the proposal would not have a significant economic impact on a substantial number of small entities.

Several commenters expressed concern that the proposed rule would have a significant effect on the horse industry. One commenter stated that the Tennessee Walking Horse industry has a $300 million impact on the economy in Tennessee alone and that many in the industry have already been irreparably harmed. Commenters generally identified a decline in the industry, with some commenters discussing declining sale values for young horses and other commenters who supply goods to the Tennessee Walking Horse industry stating that their business has been down in recent years. One commenter believed that requiring minimum penalties would force him to close his horse business, and that many others would do the same.

Two commenters stated that, as trainers, they had seen a drop in the number of horses that are in training barns. One HIO commented that their

inspections have dropped by over 30,000 horses, presumably in recent years.

Several commenters noted that many walking horse shows benefit some kind of charity. These commenters predicted that the proposed rule would lead to charities receiving fewer revenues from such shows due to a lack of participation.

One commenter cited a recent Government Accountability Office (GAO) report, ''Horse Welfare: Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter,'' [7] that included an econometric model used to determine what portion of declining horse sale prices may have been due to bans on horse slaughter within the United States. This commenter asked us to conduct a similar analysis analyzing the Department's influence on the decline of the Tennessee Walking Horse industry, as expressed in horse sale prices in Tennessee and Kentucky.

Another commenter stated that the Tennessee Walking Horse industry has declined more than the horse industry in general, due to factors related to the desires of many in the industry to continue soring horses and the desires of others not to be associated with such activities.

We do not believe that minimum penalties for violations of the Act will necessarily have the effect described by these commenters. People who do not violate the Act, for example, will be unaffected; the minimum penalty protocol will only affect violators.

While it is possible that increased penalties for violations of the Act could lead to reduced attendance at shows and exhibitions, this is not the only possible outcome. The minimum penalties could also lead owners and trainers of walking horses, racking horses, and other gaited horses to use training methods that do not involve soring. This would allow for continued attendance at all shows, including those benefitting charities.

The GAO report cited by one commenter used a hedonic model, a type of model that predicts horse prices based on the estimated components of the quality (or value) of the horse. Although some commenters supplied anecdotal data regarding the walking horse industry, we do not have sufficient, broad-based data about the prices of Tennessee Walking Horses, racking horses, and other gaited horses to conduct such an analysis with respect to our enforcement activities.

[7] Available at *http://www.gao.gov/products/GAO-11-228.*

One commenter stated that his HIO had previously implemented the proposed penalties voluntarily. As a result, the commenter stated, exhibitors who had shown with the HIO the previous year advised the HIO that, due to the subjectivity of the inspection process and the possibility of receiving an undeserved violation, they could not show with the HIO now. The commenter stated that implementation of these penalties has already harmed his organization on a small level and expressed concern about the effects on the whole industry of mandating the penalties in the proposed rule.

This final rule will put all HIOs in an equivalent competitive position with respect to penalties, thus removing the incentive for exhibitors to leave organizations such as the commenter's for another HIO on the basis of the penalties assessed by that HIO (unless an HIO decides to impose penalties greater than those required in § 11.25).

Several commenters stated that the Act says that nothing should be done to harm the horse industry, and that the proposed rule would do exactly that.

We were unable to determine what section of the Act the commenters are referring to. In the Act, however, Congress does find that horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore. Requiring mandatory minimum penalties for violations of the Act will ensure consistency among HIOs and further the purpose of the Act, which is to eliminate the cruel and inhumane practice of soring.

Some commenters expressed concern about the potential impact on HIOs of the requirement to provide an appeals process. These commenters stated that providing investigative services, gathering witnesses, and then absorbing the cost of lawsuits should a party be dissatisfied with the outcome of an appeal would present prohibitive costs for HIOs.

HIOs have existing structures to support these activities. Many HIOs currently charge fees for appeals in order to cover the costs of such activities. Should there be a significant increase in appeals, we expect that HIOs will be able to handle them.

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

Executive Order 12866 and Regulatory Flexibility Act

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

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

Efforts to eliminate soring have been hindered by the non-uniform assessment of penalties for violations of the Act. The rule will require HIOs to adhere to a uniform minimum penalty protocol. Also, the rule will give USDA the authority to decertify HIOs that refuse to implement the minimum penalty protocol.

Since the HIOs already administer a penalty protocol for violations of the Act, the proposed rule is not expected to impose additional costs upon HIOs or show participants (other than those individuals who incur penalties for violating the Act or the regulations).

The uniform penalty protocol may benefit the walking horse industry by:

- Helping to ensure more humane treatment of the horses;
- Reducing uncertainty about penalties for infractions of the Act;
- Enhancing the reputation and integrity of the walking horse industry;
- Providing for more fair competition at shows, which may positively impact attendance and regional economies; and
- Improving the value of the walking horse breeds.

The Small Business Administration's (SBA) small-entity standard for business associations that promote horses through the showing, exhibiting, sale, auction, registry, or any activity which contributes to the advancement of the horse is not more than $7 million in annual receipts (North American Industry Classification System (NAICS) 813910). The SBA small-entity standard for entities involved in Horses and Other Equine Production is $750,000 or less in annual receipts (NAICS 112920), while the small-entity standard is $7 million or less in annual receipts for businesses classified within Support Activities for Animal Production (NAICS 115210). Businesses that may be affected by this rule are likely to be small.

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 11 as follows:

PART 11—HORSE PROTECTION REGULATIONS

■ 1. The authority citation for 9 CFR part 11 continues to read as follows:

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

§ 11.7 [Amended]

■ 2. In § 11.7, paragraph (g), the first sentence is amended by removing the word ''section'' the second time it appears and adding the word ''part'' in its place.

■ 3. In § 11.21, the section heading and paragraph (d) are revised to read as follows:

§ 11.21 Inspection procedures for designated qualified persons (DQPs).

* * * * *

(d) The HIO that licensed the DQP shall assess and enforce penalties for violations in accordance with § 11.25 and shall report all violations in accordance with § 11.20(b)(4).

■ 4. A new § 11.25 is added to read as follows:

§ 11.25 Minimum penalties to be assessed and enforced by HIOs that license DQPs.

(a) *Rulebook.* Each HIO that licenses DQPs in accordance with § 11.7 must include in its rulebook, and enforce, penalties for the violations listed in this section that equal or exceed the penalties listed in paragraph (c) of this section and must also enforce the requirement in paragraph (d) of this section.

(b) *Suspensions.* (1) For the violations listed in paragraph (c) of this section that require a suspension, any individuals who are responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse in a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction must be suspended. This may include, but may not be limited to, the manager, trainer, rider, custodian, or seller, as applicable. In addition, if the owner allowed any activity listed in this paragraph, the owner must be suspended as well.

(2) Any person who is responsible for the shipping, moving, delivering, or receiving of any horse that is found to be bilaterally sore or unilaterally sore as defined in paragraph (c) of this section, in violation of the scar rule in § 11.3, or in violation of the prohibition against the use of foreign substances in § 11.2(c), with reason to believe that such horse was to be shown, exhibited, entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in any horse show, horse exhibition, or horse sale or auction, must be suspended; *Provided,* that this requirement does not apply if the horse was transported by a common or contract carrier or an employee thereof in the usual course of the carrier's business or the employee's employment, unless the carrier or employee had reason to believe that the horse was sore.

(3) A person who is suspended must not be permitted to show or exhibit any horse or judge or manage any horse show, horse exhibition, or horse sale or auction for the duration of the suspension.

(4) Any person with multiple suspensions must serve them consecutively, not concurrently.

(c) *Minimum penalties*—(1) *Bilateral sore.* A horse is found to be sore in both its forelimbs or hindlimbs. The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction. First offense: Suspension for 1 year. Second offense: Suspension for 2 years. Third offense and any subsequent offenses: Suspension for 4 years.

(2) *Unilateral sore.* A horse is found to be sore in one of its forelimbs or hindlimbs. The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction. First offense: Suspension for 60 days. Second offense: Suspension for 120 days. Third offense and any subsequent offenses: Suspension for 1 year.

(3) *Scar rule violation.* A horse is found to be in violation of the scar rule in § 11.3. The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction. First offense: Suspension for 2 weeks (14 days). Second offense: Suspension for 60 days. Third offense and any subsequent offenses: Suspension for 1 year.

(4) *Foreign substance violations.* Violations of the prohibition against the use of foreign substances in § 11.2(c).

(i) *Before or during the show, exhibition, sale, or auction.* The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(ii) *After the show, exhibition, sale, or auction.* Suspension for 2 weeks (14 days). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(5) *Equipment violation.* Violations of the equipment-related prohibitions in § 11.2(b)(1) through (b)(10) and (b)(12) through (b)(17).

(i) *Before or during the show, exhibition, sale, or auction.* The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(ii) *After the show, exhibition, sale, or auction.* Suspension for 2 weeks (14 days). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(6) *Shoeing violation.* Violation of the shoeing-related prohibitions in § 11.2(b)(18). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(7) *Heel-toe ratio.* Violation of the heel-toe ratio requirement in § 11.2(b)(11). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(8) *Suspension violation.* A violation of any suspension penalty previously issued. Suspension for an additional 6 months (180 days) for each occurrence.

(d) *Unruly or fractious horse.* A horse that cannot be inspected in accordance with § 11.21. The horse must be dismissed from the individual class for which it was to be inspected.

(e) *Appeals.* The HIO must provide a process in its rulebook for alleged violators to appeal penalties. The process must be approved by the

Department. For all appeals, the appeal must be granted and the case heard and decided by the HIO or the violator must begin serving the penalty within 60 days of the date of the violation. The HIO must submit to the Department all decisions on penalty appeals within 30 days of the completion of the appeal. When a penalty is overturned on appeal, the HIO must also submit evidence composing the record of the HIO's decision on the appeal.

(f) *Departmental prosecution.* The Department retains the authority to initiate enforcement proceedings with respect to any violation of the Act, including violations for which penalties are assessed in accordance with this section, and to impose the penalties authorized by the Act if the Department determines that such actions are necessary to fulfill the purpose of the Act and this part. In addition, the Department reserves the right to inform the Attorney General of any violation of the Act or of this part, including violations for which penalties are assessed in accordance with this section.

Done in Washington, DC, this 31st day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–13759 Filed 6–6–12; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[Docket No. PRM–26–7; NRC–2011–0220]

Certification of Substance Abuse Experts

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) will consider in the rulemaking process the issues raised in the petition for rulemaking (PRM), PRM–26–7, submitted by the American Academy of Health Care Providers in the Addictive Disorders (the Academy or the petitioner). The petitioner requested that the NRC amend its regulations to include the Academy as one of the organizations authorized to certify a substance abuse expert. The NRC determined that the issues raised in the PRM are appropriate for consideration and will consider them in the ongoing Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26 Technical Issues rulemaking.

DATES: The docket for the petition for rulemaking, PRM–26–7, is closed on June 7, 2012.

ADDRESSES: Further NRC action on the issues raised by this petition will be accessible on the Federal rulemaking Web site, *http://www.regulations.gov,* by searching on Docket ID NRC–2012–0079, which is the rulemaking docket for the 10 CFR part 26 Technical Issues rulemaking.

You can access publicly available documents related to the petition, which the NRC possesses and are publicly available, using the following methods:

- *Federal Rulemaking Web Site:* Supporting materials related to this petition can be found at *http://www.regulations.gov* by searching on the Docket IDs for PRM–26–7 or the 10 CFR part 26 Technical Issues rulemaking, NRC–2011–0220 and NRC–2012–0079, respectively. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668, email: *Carol.Gallagher@nrc.gov.*
- *NRC's Public Document Room (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, Maryland 20852.
- *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, contact the NRC's 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.

FOR FURTHER INFORMATION CONTACT: Paul Harris, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1169; email: *Paul.Harris@nrc.gov;* or Scott C. Sloan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1619; email: *Scott.Sloan@nrc.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2011 (76 FR 61625), the NRC published a notice of receipt (76 FR 61625) for PRM–26–7. The petitioner requested the NRC to amend its regulations under 10 CFR 26.187(b)(5) to include the Academy as one of the organizations authorized to certify a substance abuse expert.

The NRC received one comment during the public comment period (ADAMS Accession No. ML11341A064), which closed on December 19, 2011. The commenter, a student pursuing a master's degree in social work, provided a statement in support of the Academy's request to amend the NRC's regulations. The commenter stated that by ''amending the NRC's regulations to include the Academy as an authorized organization to certify substance abuse experts, more individuals can become qualified to provide addiction counseling. This would hopefully reduce the number of under qualified care providers and ensure that the clients are receiving the highest level of care.''

The NRC determined that the issues raised in PRM–26–7 are appropriate for consideration and will address them in the ongoing 10 CFR part 26 Technical Issues rulemaking. Docket No. PRM–26–7 is closed.

Dated at Rockville, Maryland, this 17th day of May 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012–13807 Filed 6–6–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0719; Directorate Identifier 2010–NM–087–AD; Amendment 39–17074; AD 2012–11–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, and –400ER series airplanes. That AD currently requires replacing the separation link assembly on the applicable entry and service doors with an improved separation link assembly, and doing related investigative and corrective actions if necessary. This new AD adds an

airplane to the applicability and removes certain other airplanes. This AD was prompted by a report that an additional airplane is subject to the unsafe condition. We are issuing this AD to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers.

DATES: This AD is effective July 12, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 12, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of April 2, 2009 (74 FR 8717, February 26, 2009).

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: Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6495; fax: (425) 917–6590; email: *kimberly.devoe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on July 19, 2011 (76 FR 42607). That NPRM proposed to continue to require replacing the separation link assembly on the applicable entry and service doors with an improved separation link assembly, and doing related investigative and corrective actions if necessary. That NPRM also proposed to add an airplane to the applicability and also remove certain other airplanes from the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 42607, July 19, 2011) and the FAA's response to each comment.

Request To Remove Certain Airplanes From the Applicability Statement

ANA stated that it has converted seven airplanes to a freighter configuration, not the four that were described in the Actions Since Existing AD Was Issued section of the proposed AD (76 FR 42607, July 19, 2011).

We infer the commenter requested that we revise the applicability of this AD. Airplanes that have been converted to a freighter configuration do not have active escape slides that are affected by the unsafe condition. We have revised paragraph (c) of this AD to apply to airplanes operating in a passenger or passenger/cargo configuration, and to indicate that the requirements of this AD become applicable when an airplane is converted to a passenger or passenger/cargo configuration.

Request To Revise the Description of Certain Service Bulletins

Boeing requested that the description of Boeing Special Attention Service Bulletin 767–25–0428, Revision 2, dated February 4, 2010; and Boeing Special Attention Service Bulletin 767–25–0428, Revision 3, dated October 21, 2010; be revised. Boeing noted that the descriptions given in the Relevant Service Information section of the proposed AD (76 FR 42607, July 19, 2011) do not match the revision descriptions as given in those service bulletins.

We agree to provide clarification. The Relevant Service Information section is intended to describe only major changes made to the service information without describing those changes in detail. In addition, the Relevant Service Information section is not restated in a final rule. Therefore, we have not changed the AD in this regard.

Request To Provide Credit for Accomplishing a Service Bulletin With Information From an Information Notice

United Airlines (UAL) requested that we provide credit for accomplishing Boeing Special Attention Service Bulletin 767–25–0428, Revision 2, dated February 4, 2010; and Boeing Service Bulletin Information Notice 767–25–0428 IN 03, dated May 6, 2010. Boeing Special Attention Service Bulletin 767–25–0428, Revision 3, dated October 21, 2010, includes the information provided in that information notice.

We partially agree. The content of an information notice is not approved by the FAA and is not intended to be used as a basis for deviation from an FAA-approved service bulletin. We have not revised the AD in this regard. However, we have provided credit for accomplishing Boeing Special Attention Service Bulletin 767–25–0428, Revision 2, dated February 4, 2010, in paragraph (h) of this final rule.

Explanation of Changes Made to This AD

We have revised the wording in paragraph (h) of this AD. This change has not affected the intent of that paragraph.

We have removed table 1 of the proposed AD (76 FR 42607, July 19, 2011). Instead, we have added paragraph (g)(3) of this final rule to specify the applicable service information for accomplishing the actions required by paragraph (g) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 42607, July 19, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 42607, July 19, 2011).

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

Costs of Compliance

We estimate that this AD affects 355 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement (retained actions from AD 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009)).	Up to 7 work-hours × $85 per hour = $595.	Up to $10,671	Up to $11,266	Up to $3,999,430.

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 have 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 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 removing airworthiness directive (AD) 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009), and adding the following new AD:

2012–11–11 The Boeing Company: Amendment 39–17074; Docket No. FAA–2011–0719; Directorate Identifier 2010–NM–087–AD.

(a) Effective Date

This airworthiness directive (AD) is effective July 12, 2012.

(b) Affected ADs

This AD supersedes AD 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, and –400ER series airplanes; operating in a passenger or passenger/cargo configuration; certificated in any category; as identified in Boeing Special Attention Service Bulletin 767–25–0428, Revision 3, dated October 21, 2010. The requirements of this AD become applicable at the time an airplane operating in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports that entry and service doors did not open fully during deployment of emergency escape slides, and reports of missing snap rings. We are issuing this AD to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers.

(f) Compliance

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

(g) Retained Replacement

This paragraph restates the requirements of paragraph (f) of AD 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009). At the applicable time specified in paragraphs (g)(1) and (g)(2) of this AD, replace the separation link assembly on the deployment bar of the emergency escape system on all the applicable entry and service doors with an improved separation link assembly, and do all the applicable related investigative and corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of any service bulletin identified in paragraphs (g)(3)(i) through (g)(3)(iii) of this AD. After April 2, 2009 (the effective date of AD 2009–04–12), only the service bulletins specified in paragraphs (g)(3)(ii) and (g)(3)(iii) of this AD may be used to accomplish the actions required by this paragraph. After the effective date of this AD, only the service bulletin identified in paragraph (g)(3)(iii) of this AD may be used to accomplish the actions required by this paragraph.

(1) For airplanes other than those having variable number VN 137: Within 48 months after April 2, 2009 (the effective date of AD 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009)).

(2) For the airplane having variable number VN 137: Within 48 months after the effective date of this AD.

(3) Use the following service information, as applicable, to accomplish the actions required by paragraph (g) of this AD.

(i) Boeing Special Attention Service Bulletin 767–25–0428, dated August 23, 2007.

(ii) Boeing Special Attention Service Bulletin 767–25–0428, Revision 1, dated May 8, 2008.

(iii) Boeing Special Attention Service Bulletin 767–25–0428, Revision 3, dated October 21, 2010.

(h) Credit for Previous Actions

This paragraph provides credit for the replacement required by paragraph (g) of this AD, if that replacement was performed before the effective of this AD using Boeing Special

Attention Service Bulletin 767–25–0428, Revision 2, dated February 4, 2010.

(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) AMOCs approved for AD 2009–04–12, Amendment 39–15818 (74 FR 8717, February 26, 2009), are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

For more information about this AD, contact Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6495; fax: (425) 917–6590; email: *kimberly.devoe@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.

(2) 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) The following service information was approved for IBR on July 12, 2012.

(A) Boeing Special Attention Service Bulletin 767–25–0428, Revision 3, dated October 21, 2010.

(ii) The following service information was approved for IBR on April 2, 2009 (74 FR 8717, February 26, 2009).

(A) Boeing Special Attention Service Bulletin 767–25–0428, Revision 1, dated May 8, 2008.

(B) Boeing Special Attention Service Bulletin 767–25–0428, dated August 23, 2007.

(3) 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.*

(4) 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.

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

Issued in Renton, Washington, on May 24, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13554 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0279; Directorate Identifier 2012–CE–007–AD; Amendment 39–17073; AD 2012–11–10]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Concept Limited (Type Certificate Previously Held by Alpha Aviation Design Limited) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Alpha Aviation Concept Limited Model R2160 Airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as oil lines fitted to affected aircraft are not fire resistant. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 12, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 12, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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 service information identified in this AD, contact Alpha Aviation Concept Limited, Ingram Road, Hamilton Airport, RD 2, Hamilton 2021, New Zealand; telephone: 011 64 7 843 7070; fax: 011 64 7843 8040; email: *customer.support@alphaaviation.co.nz;* Internet: *http://www.alphaaviation.co.nz.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329 4148.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 19, 2012 (77 FR 15980). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been determined that the oil lines fitted to affected aircraft are not fire resistant and not compliant with the requirements in FAR 23.1183. To correct this unsafe condition the Civil Aviation Authority of New Zealand issued DCA/R2000/34 requiring the replacement of oil lines with fire resistant lines. Since the issue of that AD it has been determined that the oil transmitter hoses are also not compliant with FAR 23.1183. DCA/R2000/40 retains the requirements in superseded DCA/R2000/34. The AD requirement expanded to include the replacement of the oil pressure transducer hoses.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data 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 (77 FR 15980, March 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 15980, March 19, 2012).

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $510 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $8,500, or $850 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this 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.

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

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:

2012–11–10 Alpha Aviation Concept Limited: Amendment 39–17073; Docket No. FAA–2012–0279; Directorate Identifier 2012–CE–007–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 12, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Alpha Aviation Concept Limited Model R2160 airplanes, serial numbers 001 through 378, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 79: Engine Oil.

(e) Reason

This AD was prompted by a determination that the oil lines and the oil pressure transducer hose fitted to affected aircraft are not fire resistant. We are issuing this AD to detect and replace non-fire resistant oil lines, which, if not corrected, could lead to an inflight fire.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 50 hours time-in-service (TIS) after July 12, 2012 (the effective date of this AD), replace the oil hose lines (part number (P/N) 41–23–56–000, 53–11–10–000, 53–20–13–000, 53–20–14–000, 53–34–10–010, 53–18–02–030, 53–21–14–000, or 53–22–01–000) following Apex Aircraft Service Bulletin No. 020310, dated June 3, 2002, and replace the oil pressure transducer hose and associated hardware following Alpha Aviation Service Bulletin AA–SB–79–001, Revision 0, dated February 2012.

(2) As of July 12, 2012 (the effective date of this AD), do not install any oil hose lines with P/N 41–23–56–000, 53–11–10–000, 53–20–13–000, 53–20–14–000, 53–34–10–010, 53–18–02–030, 53–21–14–000, or 53–22–01–000 on the affected aircraft.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/R2000/40, dated February 23, 2012; Apex Aircraft Service Bulletin No. 020310, dated June 3, 2002; and Alpha Aviation Service Bulletin AA–SB–79–001, Revision 0, dated February 2012, for related information. For service information related to this AD, contact Alpha Aviation Concept Limited, Ingram Road, Hamilton Airport, RD 2, Hamilton 2021, New Zealand; telephone: 011 64 7 843 7070; fax: 011 64

7843 8040; email: *customer.support@alphaaviation.co.nz;* Internet: *http://www.alphaaviation.co.nz.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(i) 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) Apex Aircraft Service Bulletin No. 020310, dated June 3, 2002; and

(ii) Alpha Aviation Service Bulletin AA–SB–79–001, Revision 0, dated February 2012.

(2) For service information identified in this AD, contact Alpha Aviation Concept Limited, Ingram Road, Hamilton Airport, RD 2, Hamilton 2021, New Zealand; telephone: 011 64 7 843 7070; fax: 011 64 7843 8040; email: *customer.support@alphaaviation.co.nz;* Internet: *http://www.alphaaviation.co.nz.*

(3) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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 Kansas City, Missouri, on May 29, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13558 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 12–11]

RIN 1515–AD89

Extension of Import Restrictions Imposed on Archaeological and Ethnological Materials From Peru

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological and ethnological material from Peru. The restrictions, which were originally imposed by Treasury Decision (T.D.) 97–50 and last extended by CBP Dec. 07–27, are due to expire on June 9, 2012, unless extended. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to indicate this third extension. These restrictions are being extended pursuant to determinations of the State Department under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 97–50 contains the Designated List of archaeological and ethnological materials that describes the articles to which the restrictions apply.

DATES: Effective June 9, 2012.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George F. McCray, Esq., Chief, Cargo Security, Carriers and Immigration Branch, Regulations and Rulings, Office of International Trade, (202) 325–0082. For operational aspects, Michael Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6558.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Peru on June 9, 1997, concerning the imposition of import restrictions on pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru. On June 11, 1997, the former United States Customs Service published T.D. 97–50 in the **Federal Register** (62 FR 31713), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating the types of archaeological and ethnological materials covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are ''effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists'' (19 CFR 12.104g(a)).

On June 6, 2002, the former United States Customs Service published T.D. 02–30 in the **Federal Register** (67 FR 38877), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until June 9, 2007.

On June 6, 2007, CBP published CBP Dec. 07–27 in the **Federal Register** (72 FR 31176), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years.

On November 11, 2011, the Department of State received a request by the Government of Peru to extend the Agreement. After the Department of State proposed to extend the Agreement and reviewed the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, State Department, determined that the cultural heritage of Peru continues to be in jeopardy from pillage of archaeological and certain ethnological materials and made the necessary determination to extend the import restrictions for an additional five-year period. Diplomatic notes were exchanged on May 10, 2012, reflecting the extension of those restrictions for an additional five year period. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological and Ethnological Material from Peru covered by these import restrictions is set forth in T.D. 97–50, see 62 FR 31713 dated June 11, 1997. The Designated List and accompanying image database may also be found at the following internet Web site address: *http://exchanges.state.gov/heritage/culprop/pefact.html,* under ''III. Categories of Objects Subject to Import Restriction'', by clicking on ''*Designated List*'' and on ''*Peru section* of the Image Database''.

It is noted that the materials identified in T.D. 97–50 as ''certain pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from

Peru'' are referred to in the Determination to Extend as ''Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru.'' The materials identified in T.D. 97–50 and those identified in the Determination to Extend are the same.

The restrictions on the importation of these archaeological and ethnological materials from Peru are to continue in effect through June 9, 2017. Importation of such materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Peru by removing the reference to ''CBP Dec. 07–27'' and adding in its place ''CBP Dec. 12–11'' in the column headed ''Decision No.''.

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: June 4, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–13859 Filed 6–6–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 24F; AG Order No. 3336–2012]

RIN 1140–AA08

Firearms Disabilities for Certain Nonimmigrant Aliens (2001R–332P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: In 2002, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published an interim final rule implementing the provision of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, relating to firearms disabilities for certain nonimmigrant aliens. That regulation implemented the law by prohibiting, with certain exceptions, the sale or disposition of firearms or ammunition to, and the possession, shipment, transportation, or receipt of firearms or ammunition by, nonimmigrant aliens.

The Department of Justice has now determined that the relevant statutory prohibitions on transfer and possession of firearms and ammunition apply only to nonimmigrant aliens who were admitted to the United States under a nonimmigrant visa, and that the prohibitions do not apply to nonimmigrant aliens who lawfully entered the United States without a visa. The Department is therefore issuing this rule to make conforming changes to the regulations, so that the regulations are consistent with the Department's current legal interpretation.

This final rule addresses only the nonimmigrant alien visa issue. The remaining issues raised by the 2002 interim final rule, and the public comments submitted with respect to those issues, will be addressed in a separate forthcoming rule.

DATES: This rule is effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: 202–648–7094.

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1998, Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (''the Act'' or ''the 1998 Act''). Among other things, that Act amended the Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44), to enact the provisions now codified in 18 U.S.C. 922(d)(5)(B) and 922(g)(5)(B). These provisions expanded the list of aliens subject to certain firearms and ammunition prohibitions by proscribing, with certain exceptions, the sale or disposition of firearms or ammunition to, and the possession, shipment, transportation, or receipt of firearms or ammunition by, aliens admitted to the United States under a nonimmigrant visa. These prohibitions became effective upon the date of enactment.

Section 101(a)(15) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15), describes various categories of nonimmigrant aliens, including, for example, diplomats, temporary visitors for business or pleasure, foreign students, participants in exchange programs, fiancée(s), and various categories of temporary workers in the United States. Not all nonimmigrant aliens admitted to the United States require a visa; for example, some nonimmigrant aliens may be admitted under the Visa Waiver Program (VWP). *See* 8 U.S.C. 1187.

Section 922(g)(5)(A) of title 18 makes it unlawful for any person who is an alien illegally or unlawfully in the United States to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce, or possess any firearm or ammunition in or affecting commerce. Section 922(d)(5)(A) makes it unlawful for any person to sell or

otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient is an alien illegally or unlawfully in the United States.

The 1998 Act amended section 922(g)(5) to expand the list of persons who may not lawfully ship, transport, possess, or receive firearms or ammunition to include, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the INA (8 U.S.C. 1101(a)(26)). The Act also amended section 922(d)(5) to make it unlawful to sell or dispose of a firearm or ammunition to an alien who has been admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the INA. There are exceptions to these general rules regarding aliens who have been admitted under nonimmigrant visas. As specified in 18 U.S.C. 922(y)(2), the prohibition does not apply if the nonimmigrant alien is:

''(A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States, or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.''

In addition, section 922(y)(3) provides that any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the prohibition contained in section 922(g)(5)(B) if the Attorney General approves a petition for the waiver.

II. Interim Final Rule and Request for Comments

On February 5, 2002, ATF published in the **Federal Register** an interim final rule implementing the provisions of the 1998 Act relating to firearms disabilities for nonimmigrant aliens (67 FR 5422). On that same date, ATF also published in the **Federal Register** a proposed rule soliciting comments on the interim regulations (Notice No. 935, 67 FR 5428).

With respect to the scope of the statutory prohibitions for nonimmigrant aliens, which is the sole focus of this final rule, ATF noted in the interim rule that a nonimmigrant visa does not itself provide nonimmigrant status. A visa simply facilitates travel, and expedites inspection and admission to the United States, by showing that the State Department does not believe the individual to be inadmissible and has authorized him or her to apply for admission at a U.S. port of entry. Moreover, ATF asserted that, at that time, just under fifty percent of nonimmigrant aliens required a nonimmigrant visa to enter the United States. Other nonimmigrant aliens fell within various categories that were exempt from the nonimmigrant visa requirement for admission to the United States (*e.g.,* aliens eligible for travel under the Visa Waiver Program; most Canadian visitors). Finally, ATF explained its belief that it would be inconsistent with the legislative history of the Act to adopt an interpretation of the prohibition that did not include all nonimmigrants lawfully admitted to the United States.

Based on these reasons, ATF interpreted the 1998 Act's statutory prohibitions to apply to any alien in the United States in a nonimmigrant classification, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(15)). That definition included, in large part, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and various categories of temporary foreign workers.

The interim rule also amended the regulations to give the Attorney General or his delegate the authority to require nonresidents bringing firearms and ammunition into the United States for hunting or sporting purposes to obtain an import permit (except for those exempt importations specified in the regulations).[1]

The comment period for Notice No. 935 closed on May 6, 2002.

[1] The text of the regulations expressly provides that the Secretary of the Treasury or his delegate possesses the authority to require these permits. After the January 2003 transfer of ATF from the Department of the Treasury to the Department of Justice, however, references to the Secretary of the Treasury were ''deemed to refer'' to the Attorney General. *See* 28 CFR 0.133(a)(4).

III. Analysis of Comments: The Interim Rule is Inconsistent With the Plain Language of the Statute Regarding the Application of the Nonimmigrant Alien Prohibition

In response to Notice No. 935, ATF received 72 comments. Several commenters disagreed with ATF's broad interpretation that the new prohibitions on transfer and possession of firearms and ammunition in 18 U.S.C. 922(d)(5)(B) and 922(g)(5)(B) applied to all aliens in the United States in a nonimmigrant classification, not just those aliens who were admitted to the United States with a nonimmigrant visa.

For example, one commenter (Comment No. 60) noted that:

> Nonimmigrant aliens not required to have visas are primarily Canadians or citizens of countries in the Visa Waiver Program (which are friendly to the U.S.), and this new statutory prohibition plainly does not apply to them. * * * The proposed rule should be redrafted to conform to the statute.

The commenter further stated that, ''[b]y confining the reach of the provision to aliens admitted under a non-immigrant visa, Congress made the policy decision not to include aliens from countries from which the United States does not require a visa.''

Similar concerns were raised by other commenters, including a trade association that represents the interests of importers and exporters of firearms and ammunition on matters that impact the industry.

The U.S. Department of Defense (DOD) also disagreed with ATF's interpretation, particularly with respect to the possible application to foreign military personnel. DOD maintained that the regulations (1) Are contrary to the plain language and legislative history of the Act, (2) are inconsistent with existing ATF regulatory treatment of foreign military personnel, and (3) have the potential to adversely affect national security and the global war on terrorism. DOD also asserted that Canadian and other allied military personnel are not admitted to the United States under a nonimmigrant visa, but rather are part of the Visa Waiver Program or are subject to other regulatory waivers.

ATF also received a number of public comments on other aspects of the interim rule. This final rule is limited solely to the nonimmigrant visa provisions. All other issues raised by the interim rule, and the public comments on those issues, will be addressed in a separate, forthcoming final rule.

IV. Advice From the Office of Legal Counsel

Given the commenters' concerns, in 2011 ATF requested the opinion of the Department of Justice's Office of Legal Counsel (OLC) regarding ATF's interpretation in the interim rule that the prohibition in 18 U.S.C. 922(g)(5)(B) applied to any alien who has the status of ''nonimmigrant alien,'' regardless of whether the alien required a visa in order to be admitted to the United States. Pursuant to 28 U.S.C. 510, the Attorney General has delegated to OLC responsibility for, among other things, preparing the formal opinions of the Attorney General, rendering opinions to the various federal agencies, assisting the Attorney General in the performance of his function as legal advisor to the President, and rendering opinions to the Attorney General and the heads of the various organizational units of the Department of Justice. *See* 28 CFR 0.25.

In an October 28, 2011 memorandum to ATF, OLC concluded that the plain text of the statute applies only to nonimmigrant aliens who must have visas to be admitted to the United States, not to all aliens with nonimmigrant status: ''[t]he statutory reference to nonimmigrants 'admitted * * * under a nonimmigrant visa' * * * indicates that Congress intended the firearms disabilities in section 922(g)(5)(B) to apply only to a subset of nonimmigrants—namely those who possess a 'nonimmigrant visa.' '' [2] OLC also found no affirmative support in the legislative history for the conclusion that the prohibition applies to all nonimmigrant aliens.

V. The Present Final Rule

Upon review of the comments and in light of the OLC opinion, the Department is issuing a final rule that applies to the firearms disabilities in section 922(d)(5)(B) and 922(g)(5)(B) only to aliens admitted to the United States under a nonimmigrant visa, as that term is defined in section 101(a)(26) of the INA (8 U.S.C. 1101(a)(26)). Nonimmigrant aliens lawfully admitted to the United States without a visa, pursuant either to the Visa Waiver Program or other exemptions from visa requirements, will not be prohibited from shipping, transporting, receiving, or possessing firearms or ammunition, and the regulations will also no longer proscribe the sale or other disposition of firearms or ammunition to such nonimmigrant aliens.[3]

Accordingly, this final rule makes conforming revisions to the regulations in 27 CFR 478.32, 478.44, 478.45, 478.99, 478.120, and 478.124. The final rule also amends the regulations by adding a definition for the term ''Nonimmigrant visa'' that mirrors the definition in section 101(a)(26) of the INA (8 U.S.C. 1101(a)(26)). ATF will be making conforming changes to the Form 4473 and its instructions. ATF is also making purely clarifying changes to the language of §§ 478.44 and 478.45 to more clearly state the statutory exceptions.

In addition, ATF is adding language in § 478.120(a) (and will also be revising the Form 6NIA) to make clear that nonimmigrants lawfully admitted to the United States without a visa will continue to be required to apply for and obtain an approved Form 6NIA if they are temporarily importing or bringing firearms or ammunition into the United States for lawful hunting or sporting purposes. The amended § 478.120, however, will no longer require nonimmigrant aliens admitted to the United States without a visa to submit documentation that they fall within one of the exceptions in 18 U.S.C. 922(y)(2) or the waiver in section 922(y)(3).[4] The existing provisions of § 478.120 are being recodified in paragraph (b), which deals with aliens who are admitted under a nonimmigrant visa (and who are required to submit such documentation).

In the 2002 interim rule, ATF explained its reasons for imposing a requirement that nonimmigrants bringing firearms and ammunition into the United States for hunting or sporting purposes obtain an import permit. *See* 67 FR at 5424; *see also* 27 CFR 478.115(e) (''Notwithstanding the provisions of paragraphs (d) (1), (2), (3), (4) and (5) of this section, the [Attorney General] or his delegate may in the interest of public safety and necessity require a permit for the importation or bringing into the United States of any firearms or ammunition.''). Even though aliens admitted to the United States who did not require a nonimmigrant visa will no longer be subject to the nonimmigrant prohibition on possession of firearms, the 2002 interim rule also cited two additional reasons for requiring *all* nonimmigrant aliens seeking to bring firearms or ammunition into the United States to obtain import permits: ''It will also enable ATF to be aware of non-immigrant aliens who are bringing or attempting to bring firearms or ammunition into the United States. Finally, it will ensure nonimportable firearms and ammunition do not enter the United States.'' 67 FR 5424. In short, the permit process is designed to ensure that the nonimmigrant aliens can lawfully possess a firearm in the United States (*i.e.,* that they do not fall within any of the other statutory prohibitions on possession of firearms) and it gives ATF an opportunity to conduct a background check on the applicant if warranted.[5] Thus, the language of § 478.120(a) makes no change in the status quo for nonimmigrant aliens lawfully admitted to the United States without a visa, except that they will no longer be required to submit documentation that they fall within one of the statutory exceptions for the nonimmigrant prohibition, consistent with the changes being made in this final rule.

The remaining issues raised in the interim rule (including other issues with respect to the regulations in 27 CFR 478.120 on importation of firearms and ammunition), along with a discussion of the comments received in response to these aspects of the interim rule, will be

[2] Memorandum for Stephen R. Rubenstein, Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, from Virginia A. Seitz, Assistant Attorney General, Office of Legal Counsel, *Re: Nonimmigrant Aliens and Firearms Disabilities Under the Gun Control Act* 4 (Oct. 28, 2011) (first omission in original).

[3] Under section 217 of the INA, 8 U.S.C. 1187, 36 countries have been designated for participation in the Visa Waiver Program, and eligible nationals of those countries may seek admission to the United States without a nonimmigrant visa as temporary visitors for business or pleasure for up to 90 days, if otherwise admissible. *See* 8 CFR 217.2. VWP travelers are required to have a valid authorization through the Electronic System for Travel Authorization prior to travel. *See* 8 CFR 217.5. There is a separate visa waiver program for admission to Guam or the Commonwealth of the Northern Mariana Islands for eligible travelers from 12 designated countries and geographic areas for temporary visits for business or pleasure for up to 45 days. *See* 8 CFR 212.1(q). Nonimmigrant aliens may be eligible for travel to the United States without a visa under additional authorities. *See, e.g.,* 8 CFR 212.1; 22 CFR 41.2(*l*); *http://www.travel.state.gov/visa/temp/without/without_1990.html#countries.*

Canadian citizens are permitted to enter the United States as nonimmigrants without a visa for most purposes. However, certain categories of Canadians are required to enter with a visa (falling within the nonimmigrant visa categories E, K, S, or V). *See* 8 CFR 212.1(a)(1); 22 CFR 41.2(a).

Other regulatory provisions allow nationals of certain other countries to enter the United States without a visa in limited circumstances. *See generally* 8 CFR 212.1; 22 CFR 41.2. However, with only very narrow exceptions, Mexican nationals generally require a nonimmigrant visa (or a Border Crossing Card, Form DSP–150, which is itself a visa) to be admitted to the United States. *See* 8 CFR 212.1(c); 22 CFR 41.2(g).

[4] Aliens who desire to import firearms or ammunition for other than legitimate hunting or lawful sporting purposes may apply for an import permit by filing an ATF Form 6—Part I.

[5] Regulations at 28 CFR 25.6(j)(1) allow access to the National Instant Criminal Background Check System Index for purposes of providing information to federal agencies in connection with issuance of a firearms-related or explosives-related permit or license.

addressed in a separate, forthcoming final rule.[6]

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and with Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget (OMB). However, this rule will not have an annual effect on the economy of $100 million, nor will it 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. Accordingly, this rule is not an economically significant rulemaking action for purposes of review under Executive Order 12866.

Further, the Department has assessed both costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify the costs. The Department believes that the costs associated with compliance with this final rule are minimal. This final rule does not adversely affect U.S. businesses. This rule will simplify the process for nonimmigrant aliens who were not admitted to the United States under a nonimmigrant visa to purchase and rent items from these businesses for legitimate purposes. There will be negligible cost or time impact on individuals.

B. Executive Order 13132

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605–612) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Most U.S. firearms dealers should not be significantly impacted by this final rule. The restrictions on the purchase of firearms by aliens admitted under a nonimmigrant visa have not changed under this final rule. (The provisions of the interim final rule relating to these aliens, and the public comments concerning these provisions, will be addressed in a separate, forthcoming final rule.) Individuals traveling to the United States with a valid hunting license, or registrations or invitations to trade shows or competitive sporting events, are still able to purchase ammunition and accessories and rent firearms. Additionally, nonimmigrant aliens may purchase firearms for export to their home countries. Moreover, nonimmigrants admitted to the United States who did not require a visa are no longer considered to be prohibited, and accordingly they would not need to avail themselves of the exceptions under 18 U.S.C. 922(y)(2) or the waiver under section 922(y)(3).

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

The regulations that are being amended in this final rule revise collections of information covered by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. ch. 35, and its implementing regulations, 5 CFR part 1320. The collections of information at §§ 478.44, 478.45, 478.120, and 478.124(c)(3)(iii), were approved by OMB under control number 1140–0060 under the interim rule. On November 15, 2011, the Department published a 60-day notice of information collection in the **Federal Register** advising the public that it was seeking an extension of the currently approved collection (1140–0060) and requesting comments from the public and affected agencies on the information collection (76 FR 70757). The comment period closed on January 17, 2012. On January 20, 2012, the Department published a notice in the **Federal Register** advising that it was seeking public comment for an additional 30 days (77 FR 3006). The extended comment period closed on February 21, 2012 (77 FR 4828, Jan. 31, 2012). ATF did not receive any comments concerning the information collection. However, ATF has advised OMB of certain changes that needed to be made to the approved information collection as a result of this final rule, *e.g.,* number of respondents, burden hours, etc.

In addition, ATF requested emergency clearance from OMB of revisions to

[6] With respect to the concerns presented by DOD, ATF notes that nonimmigrant aliens designated as distinguished foreign visitors by the State Department, as well as foreign military personnel, are exempt, under certain circumstances, from the general prohibition on aliens possessing firearms in the United States. Foreign military personnel are exempt from the prohibition when they can verify that the firearm or ammunition they seek to possess is for their exclusive use in performance of their official duties while in the United States and that the firearm or ammunition will be removed from the United States when they leave. This is consistent with the information provided on ATF Form 6NIA (5330.3D), Application/Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens. General Information number 4 exempts certain diplomats, distinguished foreign visitors, law enforcement officers of friendly foreign governments entering the United States on official law enforcement business, and foreign military officers entering the United States on official duty.

control number 1140–0020 (Form 4473) to conform with these regulatory changes, and OMB approved those revisions on April 13, 2012, for a period of 180 days.

ATF also intends to make revisions to Form 6NIA (approved by OMB under control number 1140–0084), Form 7 (approved by OMB under control number 1140–0018), and Form 7CR (approved by OMB under control number 1140–0038) to conform with the regulatory changes made in this final rule. These information collections will be submitted to OMB for review and approval. In the interim, to ensure that these forms are completed in a way that conforms with this regulation, ATF will distribute an informational notice with the affected forms notifying applicants of the changes and providing clarification as to the proper completion of the forms.

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

Disclosure

Copies of the interim rule, the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226; telephone: 202–648–8740.

Drafting Information

The author of this document is James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR part 478 is amended as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 1. The authority citation for 27 CFR part 478 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; 44 U.S.C. 3504(h).

■ 2. Section 478.11 is amended by adding a definition for the term ''Nonimmigrant visa'' in alphabetical order to read as follows:

§ 478.11 Meaning of terms.

* * * * *

Nonimmigrant visa. A visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*

* * * * *

■ 3. Section 478.32 is amended by revising the introductory text of paragraphs (a)(5)(ii) and (d)(5)(ii), and by revising paragraph (f), to read as follows:

§ 478.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

(a) * * *

(5) * * *

(ii) Except as provided in paragraph (f) of this section, has been admitted to the United States under a nonimmigrant visa: *Provided,* That the provisions of this paragraph (a)(5)(ii) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

* * * * *

(d) * * *

(5) * * *

(ii) Except as provided in paragraph (f) of this section, has been admitted to the United States under a nonimmigrant visa: *Provided,* That the provisions of this paragraph (d)(5)(ii) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

* * * * *

(f) Pursuant to 18 U.S.C. 922(y)(3), any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section if the Attorney General approves a petition for the waiver.

■ 4. Section 478.44 is amended by revising paragraph (a)(1)(iii), and by revising the second sentence in paragraph (b), to read as follows:

§ 478.44 Original license.

(a)(1) * * *

(iii) If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is an alien who has been admitted to the United States under a nonimmigrant visa, applicable documentation demonstrating that the alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3); and

* * * * *

(b) * * * If the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is an alien who has been admitted to the United States under a nonimmigrant visa, the application must include applicable documentation demonstrating that the alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3). * * *

* * * * *

■ 5. Section 478.45 is amended by revising the second sentence to read as follows:

§ 478.45 Renewal of license.

* * * If the applicant is an alien who has been admitted to the United States under a nonimmigrant visa, the application must include applicable documentation demonstrating that the alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3). * * *

* * * * *

■ 6. Section 478.99 is amended by revising the introductory text of paragraph (c)(5) to read as follows:

§ 478.99 Certain prohibited sales or deliveries.

* * * * *

(c) * * *

(5) Is an alien illegally or unlawfully in the United States or, except as provided in § 478.32(f), is an alien who has been admitted to the United States under a nonimmigrant visa: *Provided,* That the provisions of this paragraph (c)(5) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa if that alien is—

* * * * *

■ 7. Section 478.120 is revised to read as follows:

§ 478.120 Firearms or ammunition imported by or for a nonimmigrant alien.

(a) *General.* A nonimmigrant alien temporarily importing or bringing firearms or ammunition into the United States for lawful hunting or sporting purposes must first obtain an approved ATF Form 6NIA (5330.3D).

(b) *Aliens admitted to the United States under a nonimmigrant visa.* (1) Any alien lawfully admitted to the United States under a nonimmigrant visa who completes an ATF Form 6NIA to import firearms or ammunition into the United States, or any licensee who completes an ATF Form 6 to import firearms or ammunition for such nonimmigrant alien, must attach applicable documentation to the Form 6NIA or Form 6 establishing the nonimmigrant alien falls within an exception specified in 18 U.S.C. 922(y)(2) (e.g., a hunting license or permit lawfully issued in the United States) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3).

(2) Aliens admitted to the United States under a nonimmigrant visa importing or bringing firearms or ammunition into the United States must provide the United States Customs and Border Protection with applicable documentation (e.g., a hunting license or permit lawfully issued in the United States) establishing the nonimmigrant alien falls within an exception specified in 18 U.S.C. 922(y)(2) or has obtained a waiver as specified in 18 U.S.C. 922(y)(3) before the firearm or ammunition may be imported. This provision applies in all cases, whether or not a Form 6 is needed to bring the firearms or ammunition into the United States.

(Approved by the Office of Management and Budget under control number 1140–0060)

■ 8. Section 478.124 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 478.124 Firearms transaction record.

* * * * *

(c) * * *

(3) * * *

(iii) Must, in the case of a transferee who is an alien admitted to the United States under a nonimmigrant visa who states that he or she falls within an exception to, or has a waiver from, the prohibition in section 922(g)(5)(B) of the Act, have the transferee present applicable documentation establishing the exception or waiver, note on the Form 4473 the type of documentation provided, and attach a copy of the documentation to the Form 4473; and

* * * * *

Dated: June 1, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–13762 Filed 6–6–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 22I; AG Order No. 3337–2012]

RIN 1140–AA44

Residency Requirements for Aliens Acquiring Firearms (2011R–23P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) by removing the 90-day State residency requirement for aliens lawfully present in the United States to purchase or acquire a firearm. The Department has determined that the Gun Control Act does not permit ATF to impose a regulatory requirement that aliens lawfully present in the United States are subject to a 90-day State residency requirement when such a requirement is not applicable to U.S. citizens. In addition, upon the effective date of this interim final rule the provisions of ATF Ruling 2004–1 will become obsolete.

DATES: *Effective date:* This interim rule is effective on July 9, 2012.

Comment date: Written comments must be postmarked and electronic comments must be submitted on or before September 5, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Send comments to any of the following addresses—

- James P. Ficaretta, Program Manager, Mailstop 6N–602, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Avenue NE., Washington, DC 20226; *ATTN: ATF 22I.* Written comments must appear in minimum 12 point font size (.17 inches), include your mailing address, be signed, and may be of any length.
- 202–648–9741 (facsimile).
- *http://www.regulations.gov*. Federal eRulemaking portal; follow the instructions for submitting comments.

You may also view an electronic version of this rule at the *http://www.regulations.gov* site.

See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226, telephone (202) 648–7094.

SUPPLEMENTARY INFORMATION:

I. Background

Section 922(b)(3) of the Gun Control Act of 1968 (GCA), 18 U.S.C. 922(b)(3), makes it unlawful for a Federal firearms licensee (FFL) to sell or deliver any firearm to any nonlicensee who the licensee knows or has reasonable cause to believe does not reside in the State in which the licensee's place of business is located. Exceptions are provided for over-the-counter transfers of a rifle or shotgun to out-of-State residents if the transfers fully comply with the State laws of the buyer and seller, and for loans and rentals of a firearm for temporary use for lawful sporting purposes. Regulations that implement section 922(b)(3) are contained in 27 CFR 478.99(a).

The term ''State of residence'' is defined in 27 CFR 478.11 as ''[t]he State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State.'' In addition, for aliens, the definition also provides that ''[a]n alien who is legally in the United States shall be considered to be a resident of a State only if the alien is residing in the State and has resided in the State for a period of at least 90 days prior to the date of sale or delivery of a firearm.'' This 90-day length of residency requirement does not apply to U.S. citizens.

Prior to making a transfer of a firearm to a nonlicensed individual who is a resident of the State in which the licensee's business premises are located, the regulations at § 478.124(c) require the licensee to obtain from the transferee (buyer) a completed ATF Form 4473, Firearms Transaction Record, that shows certain information, including whether the transferee is a citizen of the United States, and an affirmative statement as to the

transferee's State of residence. In addition, before transferring to such a nonlicensee a firearm, the licensee must obtain from the transferee documentation establishing that the transferee is a resident of the State in which the licensee's business premises are located. That is, each transferee must present proof of residence in the State, in the form of a government-issued identification document (for example, a driver's license or State-issued identification card) containing the person's name, residence address, date of birth, and photograph. In the case of a transferee who is an alien legally in the United States and who is otherwise not prohibited from possessing a firearm, the licensee must additionally obtain from the transferee documentation establishing that the transferee has continuously resided in the State for 90 days. The licensee must also note on the form the documentation used to establish this 90-day period of residency. Examples of acceptable documentation include utility bills or a lease agreement showing that the purchaser has resided in the State continuously for at least 90 days prior to the transfer of the firearm.

Section 478.124(d), relating to the exception for over-the-counter transfers of a shotgun or rifle to out-of-State residents if the transfers fully comply with the State laws of the buyer and seller, requires purchasers to present to the licensee documentation establishing that the transferee is a resident of any State. In the case of a nonlicensee who is an alien lawfully in the United States, the licensee must additionally obtain from the transferee documentation that the transferee has resided in such State continuously for at least 90 days prior to the transfer of the firearm. Again, examples of acceptable documentation include utility bills or a lease agreement showing that the purchaser has resided in the State continuously for at least 90 days prior to the transfer of the firearm.

Section 478.125(f)(2), relating to firearms receipt and disposition by licensed collectors, provides that the licensee must, in the case of a transferee who is an alien legally in the United States (and who is not a licensee), verify the identity of the transferee by examining a valid identification document and obtain from the transferee documentation establishing that the transferee is a resident of the State in which the licensee's business premises are located if the firearm is other than a shotgun or rifle. If the firearm is a shotgun or rifle, the licensee must obtain from the transferee documentation establishing that the transferee is a resident of any State and has resided in such State continuously for at least 90 days prior to the transfer of the firearm.

II. ATF Ruling 2004–1

ATF has received questions from aliens concerning the State of residence requirement. Several aliens have asked why they were prohibited from purchasing a firearm from a Federal firearms licensee, contending that they had lived in the State where the licensee was licensed for more than 90 days. In response to those concerns, ATF issued a ruling clarifying that an FFL may not lawfully transfer a firearm to a nonimmigrant alien unless he or she has resided in a State *continuously* for at least 90 days immediately prior to the FFL conducting a National Instant Criminal Background Check System (NICS) check (ATF Rul. 2004–1, dated March 22, 2004). In addition, the ruling held that if a NICS check demonstrates a nonimmigrant alien has left the United States during the 90 days immediately preceding the NICS check, the nonimmigrant alien does not satisfy the 90-day State of residency requirement. This is the case even if the nonimmigrant alien has provided other documentation, such as utility bills or a lease agreement, to demonstrate 90 days of residency immediately preceding the NICS check. Although ATF Rul. 2004–1 specifically addresses transfers of firearms to nonimmigrant aliens, the residency requirement applies to all aliens.

III. Department Determination

During the review process for a related rulemaking proceeding, Department of Justice officials raised legal concerns regarding the 90-day residency requirement for aliens lawfully in the United States who wish to purchase a firearm from an FFL. The Department concluded that, as a matter of law, the definition of ''State of residence'' in § 478.11, which differentiates between U.S. citizens and aliens, is not a permissible interpretation of section 922(b)(3) of the GCA insofar as it applies a 90-day residency requirement to lawfully present aliens only. *See Clark* v. *Martinez,* 543 U.S. 371, 378 (2005) (holding that a single, undifferentiated statutory term cannot be given varying meanings with respect to different categories of persons to which the statutory provision applies). The Department determined that, as a matter of law, nothing in the text of section 922(b)(3) indicates that Congress intended the phrase ''State of residence'' to have different meanings for different categories of people. Section 922(b)(3) includes the term 'reside in' without any further differentiation or specification. The statute might support a range of meanings for the phrase 'reside in,' but it does not support an interpretation that gives the phrase different meanings when applied to lawfully present aliens and U.S. citizens.

The Department's determination is based on advice received from its Office of Legal Counsel (OLC) (*See* memorandum of January 30, 2012, at *http://www.justice.gov/olc/2012/ATF90dayruleFINAL1-30-12.pdf*).

IV. Interim Final Rule

Based on the Department's legal determination that the State of residence requirement imposed by section 922(b)(3) cannot have two different constructions—one that applies to U.S. citizens and another that applies to lawfully present aliens—the Department is publishing this interim final rule to make the necessary changes to existing regulations. This rule amends the regulations in 27 CFR part 478 by removing the 90-day residency requirement in the definition of ''State of residence'' in § 478.11. The rule also removes the unique proof of residency requirements in §§ 478.124 and 478.125 for aliens purchasing a firearm. Therefore, upon the effective date of this interim final rule, an alien lawfully present in the United States acquiring a firearm will be subject to the same residency and proof of residency requirements that apply to U.S. citizens.

In addition, upon the effective date of this interim final rule, ATF Ruling 2004–1 (approved March 22, 2004) will become obsolete.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and with Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget (OMB). However, this rule will not have an annual effect on the economy of $100 million, nor will it 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. Accordingly, this rule is not an economically significant rulemaking action as defined by Executive Order 12866.

The interim final rule removes restrictions and lessens burdens on various parties. It removes the 90-day residency requirement applicable only to aliens legally in the United States and not to citizens, as well as the requirement that aliens, but not citizens, purchasing a firearm provide proof of 90 days continuous residency through substantiating documentation (e.g., utility bills or a lease agreement). Upon the rule's effective date, lawfully present aliens and U.S. citizens will be subject to the same residency and proof of residency requirements. This will reduce the time burden on both nonlicensees (i.e., aliens lawfully present in the United States) and licensees from completing the paperwork requirements associated with transferring firearms. As explained below, ATF estimates that this rule will reduce such burdens by approximately 2,457 hours (1,867 hours for nonlicensees + 590 hours for licensees).

The burden placed on all nonlicensees acquiring firearms, including alien purchasers, involves the time it takes to indicate their State of residence on ATF Form 4473. In calendar year 2010, ATF estimates that Form 4473 was completed 14,409,616 times and that it took four seconds for a firearms purchaser to provide his or her State of residence on the form. As such, ATF estimates the total time for firearms purchasers to indicate their State of residence on the form to be approximately 16,010 hours. In the case of an alien purchaser who is legally in the United States, the purchaser must provide the licensee with proof of residency through the use of documentation showing that the individual has resided in the State continuously for at least 90 days prior to the transfer of the firearm. ATF estimates that in calendar year 2010, approximately 23,582 aliens purchased firearms. ATF estimates the burden on alien purchasers to comply with this requirement was approximately 4.75 minutes with an annual burden of approximately 1,867 hours (23, 582 × 4.75 minutes = 1,867 hours). The interim final rule eliminates this burden.

As indicated, the interim final rule also reduces the economic burden on licensees as it relates to Form 4473. According to ATF's National Licensing Center, there are approximately 60,844 Federal firearms licensees engaged in the business of selling firearms. Before transferring a firearm to an alien legally in the United States, the licensee must obtain from the transferee documentation establishing that the transferee has been a resident of the State in which the licensee's business premises are located for at least 90 days and note on the Form 4473 the documentation used for that purpose. ATF estimates the burden placed on a licensee to comply with this requirement to be approximately 1.50 minutes per alien purchaser, with an annual burden of approximately 590 hours (23,582 × 1.50 minutes = 590 hours). The interim final rule removes this burden.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Administrative Procedure Act (APA)

This interim final rule is being published with a process for post-promulgation submission of public comments. Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), the APA's general requirement to allow for public notice and comment prior to the promulgation of a rule does not apply when an agency finds, for ''good cause,'' that such prior notice and comment procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Department of Justice has concluded as a matter of law that the State of residence requirement in the Gun Control Act cannot have two different constructions, one that applies to U.S. citizens and another that applies to lawfully present aliens, because the statutory text applies the requirement, without distinction, to a covered sale or delivery of a firearm to ''any person.'' This conclusion is compelled by Supreme Court decisions holding that a single undifferentiated statutory term must be given a single interpretation across all of its potential applications. *See, e.g., Clark* v. *Martinez,* 543 U.S. 371, 378 (2005); *United States* v. *Santos,* 533 U.S. 507 (2008). Section 27 CFR 478.11 does not currently conform with that legal conclusion, because it requires lawfully present aliens to meet an extra requirement in order to demonstrate residency. As a result, there is a discrepancy between the current regulatory definition and the Department's interpretation of the statute on which that definition is based. For as long as that discrepancy persists, a departmental regulation will bar some lawfully present aliens from purchasing firearms on the basis of a requirement the Department has concluded is not consistent with applicable law. Because ATF must, as a matter of law, rectify that discrepancy, pre-publication public comment is unnecessary, and good cause therefore exists for issuing this rule without employing the usual notice and comment procedures of the APA. Additionally, the Attorney General finds that delaying this regulatory action would be contrary to the public interest. The Department, however, welcomes public comment on this interim final rule after the rule is published.

E. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

G. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

H. Paperwork Reduction Act

The regulations that are being amended in this interim final rule revise collections of information covered by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. ch. 35, and its implementing regulations, 5 CFR part 1320. The collections of information at §§ 478.124 and 478.125 were approved by OMB under control numbers 1140–0020 and 1140–0021 (§ 478.124), and 1140–0032 (§ 478.125). ATF requested emergency clearance from OMB of revisions to control number 1140–0020 (Form 4473) to conform with these regulatory changes, and OMB approved those revisions on April 13, 2012, for a period of 180 days. On October 4, 2011, at ATF's request, the approval on the collection of information under 1140–0021 was discontinued.

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

Public Participation

A. Comments Sought

ATF is requesting comments on the interim final rule from all interested persons. ATF is also specifically requesting comments on the clarity of this interim final rule and how it may be made easier to understand.

All comments must reference this document docket number (ATF 22I), be legible, and include your name and mailing address. ATF will treat all comments as originals and will not acknowledge receipt of comments.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

B. Confidentiality

Comments, whether submitted electronically or on paper, will be made available for public viewing at ATF, and on the Internet as part of the eRulemaking initiative, and are subject to the Freedom of Information Act. Commenters who do not want their name or other personal identifying information posted on the Internet should submit their comment by mail or facsimile, along with a separate cover sheet that contains their personal identifying information. Both the cover sheet and comment must reference this docket number. Information contained in the cover sheet will not be posted on the Internet. Any personal identifying information that appears within the comment will be posted on the Internet and will not be redacted by ATF.

Any material that the commenter considers to be inappropriate for disclosure to the public should not be included in the comment. Any person submitting a comment shall specifically designate that portion (if any) of his comments that contains material that is confidential under law (*e.g.,* trade secrets, processes, *etc.*). Any portion of a comment that is confidential under law shall be set forth on pages separate from the balance of the comment and shall be prominently marked ''confidential'' at the top of each page. Confidential information will be included in the rulemaking record but will not be disclosed to the public. Any comments containing material that is not confidential under law may be disclosed to the public. In any event, the name of the person submitting a comment is not exempt from disclosure.

C. Submitting Comments

Comments may be submitted in any of three ways:

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in minimum 12 point font size (.17 inches), include your mailing address, be signed, and may be of any length.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 648–9741. Faxed comments must:

(1) Be legible and appear in minimum 12 point font size (.17 inches);

(2) Be on 8½″ x 11″ paper;

(3) Contain a legible, written signature; and

(4) Be no more than five pages long. ATF will not accept faxed comments that exceed five pages.

- *Federal eRulemaking Portal:* To submit comments to ATF via the federal eRulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

D. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this interim rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–062, 99 New York Avenue NE., Washington, DC 20226, telephone (202) 648–8740.

Drafting Information

The author of this document is James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, 27 CFR part 478 is amended as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 1. The authority citation for 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; 44 U.S.C. 3504(h).

■ 2. Section 478.11 is amended by revising the definition of ''State of residence'' to read as follows:

§ 478.11 Meaning of terms.

* * * * *

State of residence. The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is on active duty as a member of the Armed Forces, the individual's State of residence is the State in which his or her permanent duty station is located, as stated in 18 U.S.C. 921(b). The following are examples that illustrate this definition:

Example 1. A maintains a home in State X. A travels to State Y on a hunting, fishing, business, or other type of trip. A does not become a resident of State Y by reason of such trip.

Example 2. A maintains a home in State X and a home in State Y. A resides in State X except for weekends or the summer months of the year and in State Y for the weekends or the summer months of the year. During the time that A actually resides in State X, A is a resident of State X, and during the time that A actually resides in State Y, A is a resident of State Y.

Example 3. A, an alien, travels to the United States on a three-week vacation to State X. A does not have a state of residence

in State X because A does not have the intention of making a home in State X while on vacation. This is true regardless of the length of the vacation.

Example 4. A, an alien, travels to the United States to work for three years in State X. A rents a home in State X, moves his personal possessions into the home, and his family resides with him in the home. A intends to reside in State X during the 3-year period of his employment. A is a resident of State X.

* * * * *

■ 3. Section 478.124 is amended as follows:

■ a. By removing and reserving paragraph (c)(3)(ii).

■ b. In paragraph (d), by removing the proviso after the colon and by removing the colon and adding in its place a period.

■ c. In paragraph (e), by removing the words '', except for the provisions of paragraph (c)(3)(ii)'' at the end of the paragraph.

■ d. In paragraph (f), by removing the words '', and in the case of a transferee who is an alien legally in the United States, the transferee has resided in that State continuously for at least 90 days prior to the transfer of the firearm'' in the third sentence.

■ 4. Section 478.125(f) is revised to read as follows:

§ 478.125 Record of receipt and disposition.

* * * * *

(f) *Firearms receipt and disposition by licensed collectors.* (1) Each licensed collector shall enter into a record each receipt and disposition of firearms curios or relics. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a curio or relic shall, except as provided in paragraph (g) of this section, be recorded not later than the close of the next business day following the date of such purchase or other acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type, and the caliber or gauge of the firearm curio or relic. The sale or other disposition of a curio or relic shall be recorded by the licensed collector not later than 7 days following the date of such transaction. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensee, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm curio or relic, the name and address of the person to whom the firearm curio or relic is transferred, or the name and license number of the person to whom transferred if such person is a licensee, and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (e.g., a driver's license), and note on the record the method used.

(2) The format required for the record of receipt and disposition of firearms by collectors is as follows:

FIREARMS COLLECTORS ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition			
Manufacturer and/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name and address or name and license No.	Date	Name and address or name and license No.	Date of birth if non-licensee	Driver's license No. or other identification if non-licensee

* * * * *

Dated: June 1, 2012.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2012–13770 Filed 6–6–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

[Department of the Treasury Circular, Public Debt Series No. 3–72]

U.S. Treasury Securities—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule to revise the regulations governing State and Local Government Series (SLGS) securities. SLGS securities are non-marketable Treasury securities that are only available for purchase by issuers of tax-exempt securities. Current financial market conditions have resulted in extraordinarily low yields in the secondary market for some marketable Treasury securities. As a result, rates applicable to non-marketable State and Local Government Series (SLGS) securities sold to issuers of tax-exempt securities could be negative. To prevent this, Treasury is instituting a floor on the daily SLGS rate, by amending the definition of ''SLGS rate'' and the definition of the ''annualized effective Demand Deposit rate'' for Demand Deposit SLGS securities. Additionally, Treasury is revising the definition of ''Y'' in the annualized effective Demand Deposit rate calculation formula to clarify the calculation method to be used during a year that contains a leap day.

DATES: This final rule is effective June 7, 2012.

ADDRESSES: You can download this Final Rule at the following Internet addresses: *http://www.publicdebt.treas.gov, http://www.gpo.gov,* or *http://www.regulations.gov.* It is also available for public inspection and copying at the Treasury Department Library, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Debra Hines, Assistant Commissioner, Office of the Assistant Commissioner for Public Debt Accounting, Bureau of the Public Debt, at (304) 480–5101 or *opda-sib@bpd.treas.gov,* Edward Gronseth, Deputy Chief Counsel, Elizabeth Spears, Senior Attorney, or Brian Metz, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt at (304) 480–8692.

SUPPLEMENTARY INFORMATION: The SLGS program assists state and local government issuers and other entities in complying with the yield restriction and rebate requirements applicable to tax-exempt bonds under the Internal Revenue Code. The SLGS rate on Time Deposit SLGS securities is derived from

the Treasury yield curve, less Treasury's administrative costs. As Treasury's costs of administering the SLGS program have decreased so has the amount of the differential that exists between the SLGS rate and the Treasury borrowing rate. The differential was last changed in a 2005 Final Rule (70 FR 37904, June 30, 2005) when Treasury lowered the SLGS rate from 5 basis points below the current Treasury borrowing rates to 1 basis point below current Treasury borrowing rates.

In this rule, Treasury revises the definition of ''SLGS rate'' and ''annualized effective Demand Deposit rate'' to address the current extremely low yield environment. The revised definitions will prevent the calculation of the rates for SLGS securities from resulting in negative rates. No change is being made to Treasury's administrative costs. Additionally, to add clarification to part 344, Treasury revises the definition of ''Y'' in the annualized effective Demand Deposit rate calculation formula to clarify the calculation method to be used during a year that contains a leap day. This revision should not affect issuers' practices and systems.

While the formula for calculating the rate for Demand Deposit SLGS securities remains unchanged under § 344.7(a), the definition of ''annualized effective Demand Deposit rate'' is being amended. This has the effect of preventing the calculation of the rate for Demand Deposit SLGS securities from resulting in a negative rate. Demand Deposit SLGS securities will continue to bear a rate of interest based on an adjustment of the average yield for three-month (13-week) Treasury bills at the most recent auction. A new rate will be effective on the first business day following the regular auction of 13-week Treasury bills and will continue to be shown in the SLGS rate table. Lastly, Treasury's administrative costs for administering Demand Deposit SLGS securities remain unchanged under § 344.7(a)(2).

Procedural Requirements

Executive Order 12866. This final rule is not a significant regulatory action pursuant to Executive Order 12866, dated September 30, 1993.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). We ask for no collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply.

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect upon publication in the **Federal Register**, after we submit a copy of it to Congress and the Comptroller General.

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, Treasury amends 31 CFR part 344 as follows:

PART 344—U.S. TREASURY SECURITIES—STATE AND LOCAL GOVERNMENT SERIES

■ 1. The authority citation for part 344 continues to read as follows:

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102, 3103, 3104, and 3121.

■ 2. Amend § 344.1 by revising the definition of ''SLGS rate,'' to read as follows:

§ 344.1 What special terms do I need to know to understand this part?

* * * * *

SLGS rate means the current Treasury borrowing rate, less one basis point, as released daily by Treasury in a SLGS rate table. If the current Treasury borrowing rate, together with the one basis point adjustment, results in a negative rate, such corresponding SLGS rate will be set at zero.

* * * * *

■ 3. Amend § 344.7 by:
■ a. Revising paragraph (a) introductory text; and
■ b. Revising ''I'' and ''Y'' in Equation 1 in paragraph (a)(1)(i) to read as follows:

§ 344.7 What are Demand Deposit securities?

* * * * *

(a) *How is the rate for Demand Deposit securities determined?* Each security shall bear a rate of interest based on an adjustment of the average yield for 13-week Treasury bills at the most recent auction. A new annualized effective Demand Deposit rate and daily factor for the Demand Deposit rate are effective on the first business day following the regular auction of 13-week Treasury bills and are shown in the SLGS rate table. Interest is accrued and added to the principal daily. Interest is computed on the balance of the principal, plus interest accrued through the preceding day.

(1) * * *

(i) * * *

(Equation 1)

* * * * *

I = Annualized effective Demand Deposit rate in decimals. If the rate is determined to be negative, such rate will be reset to zero.

* * * * *

Y = 365 (if the year following issue date of the 13-week Treasury bill does not contain a leap year day) or 366 (if the year following issue date of the 13-week Treasury bill does contain a leap year day).

* * * * *

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2012–13779 Filed 6–6–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB17

Amendment to the Bank Secrecy Act Regulations—Requirement That Clerks of Court Report Certain Currency Transactions

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is amending the rules relating to the reporting of certain currency transactions consistent with a recent statutory amendment authorizing FinCEN to require clerks of court to file such reports with the U.S. Department of the Treasury. Such information already is required to be reported by clerks of court pursuant to regulations issued by the Internal Revenue Service (''IRS''), but FinCEN heretofore has been limited in its ability to access and share further that information because of minor differences between the relevant statutory authorities applicable to FinCEN and the IRS.

DATES: *Effective Date:* July 9, 2012.

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation, which legislative framework is commonly referred to as the ''Bank Secrecy Act'' (''BSA''),[1] which authorizes the Secretary of the Treasury (''Secretary'') to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.[2] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[3] FinCEN is authorized to impose anti-money laundering (''AML'') program requirements on financial institutions.[4]

Under 31 U.S.C. 5331, any person who is engaged in a trade or business and who, in the course of such trade or business, receives more than $10,000 in coins or currency in one transaction (or two or more related transactions) is required to file a report with respect to such transaction (or related transactions) with FinCEN. Reporting under section 5331 does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and its implementing regulations.[5]

For purposes of section 5331, currency includes foreign currency, and to the extent provided in regulations, any monetary instrument, whether or not in bearer form, with a face amount of not more than $10,000. Such monetary instruments shall not include any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of 31 U.S.C. 5312(a)(2).

Reports required under section 5331 must be in such form as FinCEN may prescribe. The reports must contain: (1) The name, address, and such other identification information as FinCEN may require, of the person from whom the coins or currency was received; (2) the amount of coins or currency received; (3) the date and nature of the transaction; and (4) such other information, including the identification of the person filing the report, as FinCEN may prescribe.

On December 23, 2011, the President signed the Consolidated Appropriations Act, 2012 (the ''Act'') into law. Section 120 of Title I, Division C of the Act amends 31 U.S.C. 5331 by further requiring that any persons ''required to file a report under section 6050I(g) of the Internal Revenue Code of 1986'' file reports with FinCEN in the time and manner prescribed by regulation. Section 6050I(g) of title 26 requires every clerk of a Federal or State criminal court who receives more than $10,000 in cash as bail for any individual to make a return of that information. The amendment to 31 U.S.C. 5331 therefore authorizes FinCEN to require clerks of court to report certain currency transactions.

II. Final Rule

The final rule contained in this document is intended to enable FinCEN to receive reports on certain currency transactions filed by clerks of court. Since 2002, FinCEN has required persons engaged in a trade or business to report certain currency transactions.[6] That requirement is deemed satisfied by the filing of a single Form 8300 for transactions subject to both the IRS's rule[7] and FinCEN's rule. The underlying statutory authority for FinCEN's 2001 rule did not authorize reporting by clerks of court. Consequently, any Form 8300 filed since 2002 by a clerk of court was reported pursuant to the IRS's rule and FinCEN's ability to access and share further such information has been limited because of the applicable restrictions on disclosure in the U.S. tax code. During calendar year 2010, approximately 7,600 Form 8300s were filed by clerks of court, representing roughly 2 percent of the total number of Form 8300s filed for that year. FinCEN has determined that the information contained in such reports can be highly useful in criminal, tax, and regulatory investigations or proceedings, and in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism.

As amended, section 5331(a)(2) now requires reporting to FinCEN of the same transaction that must be reported to the IRS under 26 U.S.C. 6050I(g) and 26 CFR 1.6050I–2. Because section 5331(a)(2) and section 6050I(g) of Title 26 are identical in terms of reporting to Treasury,[8] the final rule contained in this document provides that clerks of court required to report a transaction under section 5331(a)(2) must make that report by filing a joint FinCEN/IRS Form 8300 with Treasury. Under this dual reporting regime, only one form is required to be filed for a transaction subject to both section 5331(a)(2) and section 6050I(g) of title 26. Use of the Form 8300 currently used by clerks of court to satisfy 26 U.S.C. 6050I(g) and 26 CFR 1.6050I–2 will satisfy the requirement under the final rule. Thus, the final rule imposes no new reporting or recordkeeping burden on clerks of court.

Because the IRS authority and the FinCEN authority governing the reporting to Treasury of certain currency transactions by clerks of court are identical, FinCEN believes it is appropriate for the final rule to adopt the same definitions and rules relating to the time and manner of reporting, including verifying the identity of each payor of bail listed in the report. Thus, for example, the final rule defines a clerk of court to mean, with respect to a Federal or a State court, the clerks' office or the office, department, division, branch, or unit of the court that is authorized to receive bail.

The final rule makes two other non-substantive conforming changes to FinCEN's rule requiring a trade or business to report certain currency transactions. The first change amends the trade or business rule to acknowledge that the same information is now required to be reported to Treasury under both 26 U.S.C. 6050I and 31 U.S.C. 5331. The second change to the trade or business rule reflects that the definition of currency used therein is slightly different from the definition used in the clerks of court rule, and therefore is not applicable for purposes of 31 U.S.C. 5331 in all cases.

III. Notice and Comment Under the Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) (''APA'') allows an agency to dispense with notice and comment when it would be impractical, unnecessary, or contrary to the public interest. Because the final rule affects

[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] 31 U.S.C. 5311.

[3] Treasury Order 180–01 (Sept. 26, 2002).

[4] 31 U.S.C. 5318(h)(2).

[5] *See, e.g.,* 31 CFR 1010.310.

[6] 66 FR 67680 (December 31, 2001), codified at 31 CFR 1010.330.

[7] 26 CFR 1.6050I–1.

[8] Section 5331 does not require the person making a report (either as a trade or business or a clerk of court) to furnish a statement concerning the report to: (i) the person whose name is required to be set forth on the report; or (ii) Federal prosecutors for the jurisdiction in which such person resides and the jurisdiction in which the specified criminal offense occurred. *Cf.* 26 U.S.C. 6050I(e) and (g). The final rule therefore does not place any of these notification requirements upon clerks of court.

only clerks of court and imposes no new or additional burden on them, notice and public comment are unnecessary.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory analysis (5 U.S.C. 604) are not applicable to the final rule contained in this document because FinCEN was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

V. Paperwork Reduction Act

This regulation is being issued without prior notice and public comment pursuant to the APA. For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and approved by the Office of Management and Budget (OMB) under control number 1506–0018. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VI. Executive Orders 13563 and 12866

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. It has been determined that the final rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 13563 and 12866.

VII. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a 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 in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth above, Chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Amend § 1010.330 by revising paragraph (a)(1)(ii) and the introductory text to paragraph (c)(1) to read as follows:

§ 1010.330 Reports relating to currency in excess of $10,000 received in a trade or business.

(a) * * *

(1) * * *

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report the same information to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

* * * * *

(c) * * *

(1) Currency. The term *currency* means—

* * * * *

■ 3. Add new § 1010.331 to read as follows:

§ 1010.331 Reports relating to currency in excess of $10,000 received as bail by court clerks.

(a) *Reporting requirement.*—(1) *In general.* Any clerk of a Federal or State court who receives more than $10,000 in currency as bail for any individual charged with a specified criminal offense must make a report of information with respect to that receipt of currency. For purposes of this section, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail for purposes of this paragraph (a).

(2) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires clerks to report information about financial transactions to the IRS, and 31 U.S.C. 5331 require clerks to report the same information to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(b) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) The term *currency* means—

(i) The coin and currency of the United States, or of any other country, that circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including treasurer's check and bank check), bank draft, traveler's check, or money order having a face amount of not more than $ 10,000.

(2) The term *specified criminal offense* means—

(i) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(ii) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(iii) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

(iv) Any State criminal offense substantially similar to an offense described in this paragraph (b)(2) of this section.

(c) *Time, form, and manner of reporting.*—(1) *In general.* The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I–2(c)(2). The report must be filed at the time and in the manner specified in 26 CFR 1.6050I–2(c)(1) and (3), respectively.

(2) *Verification of identity.* A clerk required to make a report under this section must, in accordance with 26 CFR 1.6050I–2(c)(3)(ii), verify the identity of each payor of bail listed in the report.

Dated: June 1, 2012.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–13783 Filed 6–6–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1020

RIN 1506–AB18

Amendment to the Bank Secrecy Act Regulations—Exemption From the Requirement To Report Transactions in Currency

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to amend the regulations that allow depository institutions to exempt transactions of certain payroll customers [1] from the requirement to report transactions in currency in excess of $10,000. The rule substitutes the term ''frequently'' for ''regularly'' in the provision of the exemption rules dealing with payroll customers. This modification of the exemption procedures is a part of the Department of the Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

DATES: *Effective Date:* June 7, 2012.

FOR FURTHER INFORMATION CONTACT: FinCEN, Regulatory Policy and Programs Division, (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 (the ''Act'') and other legislation, which legislative framework is commonly referred to as the Bank Secrecy Act (''BSA''),[2] which authorizes the Secretary of the Treasury (''Secretary'') to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [3] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[4] FinCEN is authorized to impose AML program requirements on financial institutions.[5]

The Money Laundering Suppression Act of 1994 amended the BSA by establishing a system for exempting transactions by certain customers of depository institutions from currency transaction reporting.[6] In general, the statutory exemption system creates two types of exemptions, mandatory and discretionary exemptions.[7] Under 31 U.S.C. 5313(d) (sometimes called the ''mandatory exemption'' provision), the Secretary is required to provide depository institutions with the ability to exempt from the currency transaction reporting requirement transactions in currency between the depository institution and four specified categories of customers. The four specified categories of customers in the mandatory exemption provision are: (1) Another depository institution; (2) a department or agency of the United States, any State, or any political subdivision of any State; (3) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between two or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision; and (4) any business or category of business the reports on which have little or no value for law enforcement purposes.

Under 31 U.S.C. 5313(e) (sometimes called the ''discretionary exemption'' provision) the Secretary is authorized, but not required, to allow depository institutions to exempt from the currency transaction reporting requirement transactions in currency between it and a qualified business customer.[8] A ''qualified business customer,'' for purposes of the discretionary exemption provision, is a business that: (A) Maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution; (B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and (C) meets criteria that the Secretary determines are sufficient to ensure that the purposes of the BSA are carried out without requiring a report with respect to such transactions.[9]

The Secretary was required to establish by regulation the criteria for granting and maintaining an exemption for qualified business customers,[10] as well as guidelines for depository institutions to follow in selecting customers for exemption.[11] The BSA allowed for the guidelines to include a description of the type of businesses for which no exemption would be granted under the discretionary exemption provision. The Secretary also was required to prescribe regulations that require an annual review of qualified business customers and require depository institutions to resubmit information about those customers with modifications if appropriate.[12]

B. Overview of the Current Regulatory Provisions To Exempt Payroll Customers From Currency Transaction Reporting (CTR)

The current exemption procedures which are codified at 31 CFR 1020.315, were the result of a six-part rulemaking.[13] The current exemption procedures apply to depository institution customers that fall within one of the classes of exempt persons described in 31 CFR 1020.315(b)(1)–(7), commonly referred to as Phase I and Phase II exemptions. Phase II eligible customers include: (i) ''non-listed businesses'' [14] and (ii) ''payroll customers.'' [15] Under the current rules a non-listed business is any other person (i.e., a person not otherwise covered under the exempt person definitions) that (A) Maintains a transaction account at the bank for at least two months; (B) frequently engages in transactions in currency with the bank in excess of $10,000; and (C) is incorporated or organized under the laws of the United States or a State, or is registered as and

[1] These customers are commonly known as ''Phase II'' customers and are defined at 31 CFR 1020.315(b)(7).

[2] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR chapter X. *See* 31 CFR 1010.100(e).

[3] 31 U.S.C. 5311.

[4] Treasury Order 180–01 (Sept. 26, 2002).

[5] 31 U.S.C. 5318(h)(2).

[6] *See* section 402 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (Sept. 23, 1994).

[7] The enactment of 31 U.S.C. 5313(d) and (e) reflect the congressional intent to ''reform * * * the procedures for exempting transactions between depository institutions and their customers.'' *See* H.R. Rep. 103–652, 103d Cong., 2d Sess. 186 (Aug. 2, 1994).

[8] For additional information about the terms of 31 U.S.C. 5313(e)–(g), *see* 63 FR 50147, 50148 (Sept. 21, 1998).

[9] 31 U.S.C. 5313(e)(2).

[10] *See* 31 U.S.C. 5313(e)(3).

[11] *See* 31 U.S.C. 5313(e)(4)(A).

[12] *See* 31 U.S.C. 5313(e)(5).

[13] *See* 61 FR 18204 (Apr. 24, 1996), 62 FR 47141, 47156 (Sept. 8, 1997), 62 FR 63298 (Nov. 28, 1997), 63 FR 50147 (Sept. 21, 1998), 65 FR 46356 (July 28, 2000), and 73 FR 74010 (Dec. 5, 2008) (the rulemakings that comprise the current CTR exemption system).

[14] 31 CFR 1020.315(b)(6). (A non-listed business is an exempt person only ''[t]o the extent of its domestic operations.'')

[15] 31 CFR 1020.315(b)(7).

is eligible to do business with the United States or a State.[16] A ''payroll customer'' is any other person (i.e., a person not otherwise covered under the exempt person definitions) that: (A) Has maintained a transaction account at the bank for at least two months; (B) operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and (C) is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.[17] A payroll customer is an exempt person ''[w]ith respect solely to withdrawals for payroll purposes.'' [18]

II. Final Rule

The Terms ''Frequently'' and ''Regularly''

Under the existing CTR exemption rules codified at 31 CFR 1020.315, two separate categories of exempt persons use nearly synonymous terms for definitional purposes—''frequently'' for non-listed businesses and ''regularly'' for payroll customers. To be an exempt non-listed business, a person must, among other things, ''frequently engage[] in transactions in currency with the bank in excess of $10,000.'' [19] To be an exempt payroll customer, a person must, among other things, ''regularly withdraw[] more than $10,000 in order to pay its United States employees in currency.'' [20]

In the preamble to the December 2008 rulemaking revising the CTR exemption rules, FinCEN interpreted ''frequently'' to mean five or more transactions a year.[21] This interpretation was, in part, due to the fact that the waiting period for exempting a Phase II customer was being shortened from twelve to two months, as well as an affirmative step toward further simplifying, and thereby encouraging, the greater use of the exemption process. In that rulemaking, FinCEN did not similarly define the term ''regularly,'' and to date has never formally defined that term in the context of the applicability of the CTR exemption rules to payroll customers.

FinCEN believes that the lack of a specific definition for the term ''regularly'' may have caused, and may be continuing to cause, some banks not to utilize the exemption for payroll customers. FinCEN recognizes that it has the discretion to use slightly different terms when describing the need for non-listed businesses and payroll customers to make large transactions in currency, and that the term ''regularly'' can mean something slightly different than ''frequently.'' However, FinCEN believes that greater clarity and ease of use by banks of the CTR exemption rules weigh in favor of using the same term—i.e, ''frequently''—for both categories of exempt persons.[22] In addition, FinCEN believes that utilizing the same term in both contexts will not undermine law enforcement interests because a bank still must take reasonable and prudent steps to assure itself that a person is, in fact, a payroll customer, before utilizing that specific exemption.[23]

As a result of substituting the term ''frequently'' for ''regularly'' in the context of the payroll customer exemption, FinCEN's prior interpretation of the term ''frequently'' used in the non-listed business exemption to mean five or more times a year would equally apply to exemption determinations in the payroll customer context. This change is intended to harmonize the exemption standard for payroll customers and non-listed businesses to a single bright-line test that will provide greater ease of application and promote full use of the exemption for payroll customers.

As stated in the December 2008 rulemaking, allowing banks to exempt a Phase II customer after it has conducted five or more reportable cash transactions per year should make it easier for banks to exempt customers that conduct seasonal business, whether as a non-listed business or as a payroll customer.[24] Thus, assuming the other prerequisites are met, a bank could exempt the currency transactions of a payroll customer if the customer withdraws currency five or more times a year in order to pay its employees.

III. Notice and Comment Under the Administrative Procedure Act

The Administrative Procedure Act (''APA'') allows an agency to dispense with notice and comment when it would be impracticable, unnecessary, or contrary to the public interest. By substituting the term ''frequently'' for ''regularly,'' this final rule will make it easier for banks to apply the exemption standard to their payroll customers and promote fuller use of the exemption for these customers. Consequently, this will result in a foreseeable reduction of the compliance burden on banks by eliminating the need to otherwise file a currency transaction report and perform the recordkeeping requirements that go along with such filing. FinCEN believes that this change to the rule is a desirable change for impacted banks, does not adversely impact law enforcement interests, is otherwise noncontroversial, and would not generate meaningful comment. Hence, pursuant to 5 U.S.C. 553(b), FinCEN finds that notice and comment is unnecessary. For the same reasons, this final rule is effective upon publication pursuant to 5 U.S.C. 553(d)(1) and (3).

IV. Paperwork Reduction Act

This regulation is being issued without prior notice and public comment pursuant to the APA (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and approved by the Office of Management and Budget (OMB) under control number 1506–0004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required by the APA (5 U.S.C. 551 *et seq.*), or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

VI. Executive Orders 13563 and 12866

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. It has been determined that the final rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 13563 and 12866.

[16] 31 CFR 1020.315(b)(6).

[17] 31 CFR 1020.315(b)(7).

[18] *Id.*

[19] 31 CFR 1020.315(b)(6)(ii).

[20] 31 CFR 1020.315(b)(7)(ii).

[21] 73 FR 74010 (Dec. 5, 2008).

[22] Simplifying the CTR exemption process is consistent with the recommendations in the 2008 report issued by the U.S. Government Accountability Office (''GAO'') suggesting a variety of ways to improve the CTR exemption process. *See* ''Bank Secrecy Act: Increased Use of Exemption Provisions Could Reduce Currency Transaction Reporting While Maintaining Usefulness to Law Enforcement Efforts'' GAO–08–355 (GAO: Washington, DC: Feb. 21, 2008).

[23] *See* 31 CFR 1020.315(d) and 1020.315(e).

[24] 73 FR 74014 (Dec. 5, 2008).

VII. Unfunded Mandates Act of 1995 Statement

Because no notice of proposed rulemaking is required by the APA (5 U.S.C. 551 *et seq.*), or by any other statute, FinCEN has determined that it is not required to prepare a written statement under section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (March 22, 1995).

List of Subjects in 31 CFR Part 1020

Administrative practice and procedure, Banks, Banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, part 1020 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1020—RULE FOR BANKS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, section 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 1020.315(b)(7)(ii) is amended by removing the word ''regularly'' and adding the word ''frequently'' in its place.

Dated: June 1, 2012.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–13781 Filed 6–6–12; 8:45 am]

BILLING CODE 4810–02–P

POSTAL SERVICE

39 CFR Part 20

International Service Change—Timor-Leste

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: At the request of the Democratic Republic of Timor-Leste, the Postal Service is adding this country to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect Timor-Leste's independence from Indonesia, and its joining the Universal Postal Union as a separate member country.

DATES: *Effective date:* June 24, 2012.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: The United States Postal Service® gives notice that, on May 7, 2012, the Postal Service filed with the Postal Regulatory Commission a notice of a minor classification change to add the Democratic Republic of Timor-Leste (Timor-Leste) to the *Mail Classification Schedule* (MCS). The Commission concurred with the notice in its Order No. 1351, issued on May 23, 2012. Documents are available at *www.prc.gov*, Docket No. MC2012–17. Consequently, the Postal Service will revise IMM sections 213.5, 243.1, 292.452, 293.452, the Index of Countries and Localities, the Country Price Groups and Weight Limits, and the Individual Country Listings to add a listing for the Democratic Republic of Timor-Leste (Timor-Leste).

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 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, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

210 Global Express Guaranteed

* * * * *

213 Prices and Postage Payment Methods

* * * * *

213.5 Destinating Countries and Price Groups

* * * * *

Exhibit 213.5

Destinating Countries and Price Groups

[Insert a listing for Timor-Leste to read as follows:]

Country	GXG Price group
* * * * *	
Timor-Leste, Democratic Republic of	6
* * * * *	

* * * * *

240 First-Class Mail International

* * * * *

243 Prices and Postage Payment Methods

243.1 Prices

* * * * *

243.13 Destinating Countries and Price Groups

* * * * *

Exhibit 243.13

First-Class Mail International Price Groups

[Insert a listing for Timor-Leste to read as follows:]

Country	Price group
* * * * *	
Timor-Leste, Democratic Republic of	6
* * * * *	

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail (IPA) Service

* * * * *

292.4 Mail Preparation

* * * * *

292.45 Sortation

* * * * *

292.452 Presorted Mail—Direct Country Bundle Label

* * * * *

Exhibit 292.452

IPA Country Price Groups and Foreign Exchange Offices of Exchange Codes

[Insert a listing for Timor-Leste to read as follows:]

Country labeling name	Foreign office of exchange code	Price group
* * * *	* *	*
Timor-Leste, Democratic Republic of	DIL	14
* * * *	* *	*

* * * * *

293 International Surface Air Lift (ISAL) Service

* * * * *

293.4 Mail Preparation

* * * * *

293.45 Sortation

* * * * *

293.452 Presorted Mail—Direct Country Bundle Label

* * * * *

Exhibit 293.452

ISAL Country Price Groups and Foreign Office of Exchange Codes

[Insert a listing for Timor-Leste to read as follows:]

Country labeling name	Foreign office of exchange code	Price group
* * * *	* *	*
Timor-Leste, Democratic Republic of	DIL	14
* * * *	* *	*

* * * * *

Index of Countries and Localities

* * * * *

[Revise the current listing for ''East Timor (Indonesia)'' to read ''East Timor (Timor-Leste)''. In addition insert a listing for the new country ''Timor-Leste'']

* * * * *

Country Price Groups and Weight Limits

* * * * *

[Insert a listing for Timor-Leste to read as follows:]

Country	Global Express Guaranteed		Express Mail International		Priority Mail International [1]		First-Class Mail International	
	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max wt.[2] (ozs./lbs.)
*	*	*	*		*	*		*
Timor-Leste, Democratic Republic of	6	70	n/a	n/a	6	44	6	3.5/4
*	*	*	*		*	*		*

* * * * *

Individual Country Listings

* * * * *

[Insert an individual country listing in alphabetical order for Timor-Leste, Democratic Republic of, to read as follows:]

* * * * *

Country Conditions for Mailing

Timor-Leste, Democratic Republic of

Prohibitions (130)

No list furnished.

Restrictions

No list furnished.

Observations

None

Customs Forms Required (*123*)

First-Class Mail International Items and Priority Mail International Flat Rate

Envelopes and Small Flat Rate Priced Boxes:

PS Form 2976 (see *123.61*)

Priority Mail International parcels:

PS Form 2976–A inside 2976–E (envelope)

Global Express Guaranteed (*210*) Price Group 6

Refer to *Notice 123,* Price List, for the applicable retail, commercial base, or commercial plus price.

Weight Limit: 70 lbs.

Insurance (*212.5*)

Insured amount not over	Fee	Insured amount not over	Fee
$100	No Fee	For document reconstruction insurance or non-document insurance coverage above $800, add $1.00 per $100 or fraction thereof, up to a maximum of $2,499 per shipment.	
$200	$1.00		
$300	2.00		
$400	3.00		

Insured amount not over	Fee	Insured amount not over	Fee
$500	4.00		
$600	5.00		
$700	6.00		
$800	7.00	$2,499 max	$24.00.

Value Limit (*212.1*)

The maximum value of a GXG shipment to this country is $2,499 or a lesser amount if limited by content or value.

Size Limits (*211.22*)

The surface area of the address side of the item to be mailed must be large enough to completely contain the Global Express Guaranteed Air Waybill/ Shipping Invoice (shipping label), postage, endorsement, and any applicable markings. The shipping label is approximately 5.5 inches high and 9.5 inches long.

Maximum length: 46 inches
Maximum width: 35 inches
Maximum height: 46 inches
Maximum length and girth combined: 108 inches

General Conditions for Mailing

See Publication 141, *Global Express Guaranteed Service Guide,* for information about areas served in the destination country, allowable contents, packaging and labeling requirements, tracking and tracing, service standards, and other conditions for mailing.

Express Mail International (*220*)

Not Available

Priority Mail International *(230)* Price Group 6

Refer to *Notice 123,* Price List, for the applicable retail, commercial base, or commercial plus price.
Weight Limit: 44 lbs.

Note: Ordinary Priority Mail International includes indemnity at no cost based on weight. (See *230.*)

Priority Mail International—Flat Rate

Flat Rate Envelopes or Small Flat Rate Priced Boxes: The maximum weight is 4 pounds. Refer to *Notice 123,* Price List, for the applicable retail, commercial base, or commercial plus price.

Flat Rate Boxes—Medium and Large: The maximum weight is 20 pounds, or the limit set by the individual country, whichever is less. Refer to *Notice 123,* Price List, for the retail, commercial base, or commercial plus price.

Insurance (*232.92*)

NOT Available

Size Limits (*231.22*)

Maximum length: 42 inches
Maximum length and girth combined: 79 inches

First-Class Mail International (*240*) Price Group 6

For the prices and maximum weights for letters, large envelopes (flats), packages (small packets), and postcards, see *Notice 123, Price List.*

Size Limits

Letters: See *241.212*
Postcards: See *241.221*
Large Envelopes (Flats): See *241.232*
Packages (Small Packets): See *241.242* and *241.243*

Airmail M-Bags (*260*)—

Direct Sack to One Addressee Price Group 6

Refer to *Notice 123,* Price List, for the applicable retail, commercial base, or commercial plus price.
Weight Limit: 66 lbs.

Matter for the Blind (*270*)

Free when sent as First-Class Mail International, including Priority Mail International Flat Rate Envelopes and Small Flat Rate Priced Boxes. Weight limit: 4 pounds.

Free when sent as Priority Mail International. Weight limit: 15 pounds.

Extra Services

Certificate of Mailing (*313*)

Individual Pieces	Fee
Individual article (PS Form 3817)	$1.15
Firm mailing books (PS Form 3877), per article listed (minimum 3)	0.44
Duplicate copy of PS Form 3817 or PS Form 3877 (per page) ...	1.15
Bulk Quantities	Fee
First 1,000 pieces (or fraction thereof)	6.70
Each additional 1,000 pieces (or fraction thereof)	0.80
Duplicate copy of PS Form 3606	1.15

COD and Certified

NOT for International Mail

International Business Reply Service (*382*)

Fee: Envelopes up to 2 ounces $1.50; Cards $1.00

International Postal Money Order (*371*)

NOT Available

International Reply Coupons (*381*)

Fee: $2.20

Registered Mail (*330*)

Fee: $11.75
Maximum Indemnity: $47.33
Available for First-Class Mail International, including postcards and Flat Rate Envelopes and Small Flat Rate Priced Boxes, and matter for the blind or other physically handicapped persons. Not applicable to M-bags.

Restricted Delivery (*350*)

Fee: $4.55
Available for Registered Mail with a return receipt.
Endorsements: A remettre en main propre.

Return Receipt (*340*)

Fee: $2.35
Available for Registered Mail only.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–13637 Filed 6–6–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2011–0729; FRL–9672–9]

RIN 2060–AR05

Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing revisions to our rules pertaining to the

regional haze program. In this action, the EPA is finalizing our finding that the trading programs in the Transport Rule, also known as the Cross-State Air Pollution Rule (CSAPR), achieve greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas than source-specific Best Available Retrofit Technology (BART) in those states covered by the Transport Rule. In this action, the EPA is also finalizing a limited disapproval of the regional haze State Implementation Plans (SIPs) that have been submitted by Alabama, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia and Texas because these states relied on requirements of the Clean Air Interstate Rule (CAIR) to satisfy certain regional haze requirements. To address deficiencies in CAIR-dependent regional haze SIPs, in this action the EPA is promulgating Federal Implementation Plans (FIPs) to replace reliance on CAIR with reliance on the Transport Rule in the regional haze SIPs of Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

DATES: This final rule is effective on August 6, 2012.

ADDRESSES: *Docket.* The EPA has established a docket for this action under docket ID No. EPA–HQ–OAR–2011–0729. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 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, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Keating, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–9407; fax number: 919–541–0824; email address: *keating.martha@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action affects state and local air pollution control agencies located within the geographic areas covered by the Transport Rule [1] and whose regional haze SIP relied on CAIR [2] as an alternative to BART for sulfur dioxide (SO_2) and/or nitrogen oxide (NO_X) for electric generating units (EGUs) subject to BART requirements, or whose regional haze SIP relied on the Transport Rule. Some of the EGUs located in such geographic areas may also be affected by this action in that affected states now have the option of not requiring such EGUs to meet source-specific BART emission limits to which these EGUs otherwise could be subject.

These sources are in the following groups:

Industry group	SIC [a]	NAICS [b]
Electric Services	492	221111, 221112, 221113, 221119, 221121, 221122

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

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 will be posted at *http://www.epa.gov/ttn/oarpg/new.html* under ''Recent Actions.''

C. How is this notice organized?

The information presented in this notice 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 notice organized?
II. Background and General Legal Considerations for the EPA's Final Action
A. Background
1. Criteria for Developing an Alternative Program to BART
2. What is the relationship between BART and CAIR?
3. Remand of CAIR and Implications for State Regional Haze Implementation Plans
4. The Transport Rule and Regional Haze SIPs
B. Summary of the EPA Responses to General and Legal Issues Raised in Public Comments
1. Authority for an Alternative Trading Program
2. Effect of the Transport Rule Stay
3. Rationale for Disapproval of SIPs Based on CAIR
4. The Relationship Between a Better-Than-BART Determination and Reasonable Progress
III. Technical Analysis Supporting the Determination of the Transport Rule as an Alternative to BART
A. What analysis did we rely on for our proposed determination?
1. Application of the Two-Pronged Test
2. Identification of Affected Class I Areas
3. Control Scenarios Examined
4. Emission Projections
5. Air Quality Modeling Results
B. Summary of the EPA Responses to Comments on the Technical Analysis
1. Comments Related to the Emissions Scenarios Used in the EPA's Analysis
2. Identification of Affected Class I Areas
3. Ozone Season-Only Transport Rule States
4. Comments Asserting That the EPA Needs To Re-Do the Analysis
IV. Reasonably Attributable Visibility Impairment (RAVI)
A. What did the EPA propose?
B. Public Comments Related to RAVI
C. Final Action on RAVI
V. Limited Disapproval of Certain States' Regional Haze SIPs
A. What did the EPA propose?
B. Public Comments Related to Limited Disapprovals
C. Final Action on Limited Disapprovals
VI. FIPs
A. What did the EPA propose?
B. Public Comments on Proposed FIPs
C. Final Action on FIPs
VII. Regulatory Text
A. What did the EPA propose?
B. Clarification of Final Regulatory Text
VIII. Statutory and Executive Order Review
A. Executive Order 12866: Regulatory Planning and Review and Executive

[1] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 76 FR 48208 (August 8, 2011).

[2] *See* Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule, 70 FR 25162 (May 12, 2005).

Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
IX. Statutory Authority

II. Background and General Legal Considerations for the EPA's Final Action

A. Background

Section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state.[3] Under the Regional Haze Rule, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. 40 CFR 51.308(e)(2). The EPA provided states with this flexibility in the Regional Haze Rule, adopted in 1999, and further refined the criteria for assessing whether an alternative program provides for greater reasonable progress in three subsequent rulemakings. 64 FR 35714 (July 1, 1999); 70 FR 39104 (July 6, 2005); 71 FR 60612 (October 13, 2006). These criteria are described below.

1. Criteria for Developing an Alternative Program to BART

Specific criteria for determining if an alternative measure achieves greater reasonable progress than source-specific BART are set out in the Regional Haze Rule at § 51.308(e)(3).[4] The ''better-than-BART'' test may be satisfied as follows: If the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, then states are directed to conduct an air quality modeling study to determine differences in visibility between BART and the alternative program for each impacted Class I area for the worst and best 20 percent of days.[5] A test with the following two criteria (the ''two-pronged visibility test'') would demonstrate ''greater reasonable progress'' under the alternative program if both prongs of the test are met:

—Visibility does not decline in any Class I area,[6] and
—There is an overall improvement in visibility, determined by comparing the average differences between BART and the alternative over all affected Class I areas.

2. What is the relationship between BART and CAIR?

In May 2005, the EPA published CAIR, which required 28 states and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contribute to, or interfere with maintenance of, the 1997 national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. The CAIR established emission budgets for SO_2 and NO_X for states that contribute significantly to nonattainment in downwind states and required the significantly contributing states to submit SIP revisions that implemented these budgets. Because such SIP revisions were already overdue, the EPA subsequently promulgated CAIR FIPs for the affected states establishing cap and trade programs for EGUs with opt-in provisions for other sources. States had the flexibility to subsequently adopt SIP revisions mirroring CAIR requirements or otherwise providing emission reductions sufficient to address emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. Many affected states adopted CAIR-mirroring SIPs, while others chose to remain under CAIR FIPs.

As noted above, the Regional Haze Rule allows states to implement an alternative program in lieu of BART so long as the alternative program has been demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. The EPA made just such a demonstration for CAIR in revisions to the regional haze program made in 2005. 70 FR 39104. In those revisions, we amended our regulations to provide that states participating in the CAIR cap-and-trade programs under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4).

As a result of our determination that CAIR was ''better-than-BART,'' a number of states in the CAIR region, fully consistent with our regulations, relied on the CAIR cap-and-trade programs as an alternative to BART for EGU emissions of SO_2 and NO_X in designing their regional haze implementation plans. These states also relied on CAIR as an element of a long-term strategy for achieving their reasonable progress goals for their regional haze programs.

3. Remand of CAIR and Implications for State Regional Haze Implementation Plans

Following our determination in 2005 that CAIR was ''better-than-BART,'' the D.C. Circuit Court ruled on several petitions for review challenging CAIR on various grounds. As a result of this litigation, the D.C. Circuit Court remanded CAIR to the EPA but later decided not to vacate the rule.[7] The court thereby left CAIR and CAIR FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until the EPA replaced it with a rule consistent with the court's opinion. 550 F.3d at 1178.

[3] The preamble to the proposed rule provides additional background on the visibility requirements of the Clean Air Act and the EPA's Regional Haze Rule. 76 FR 82221–22.

[4] The Regional Haze Rule also allows for a demonstration that an alternative program provides for greater reasonable progress to be based on the clear weight of evidence. 40 CFR 51.308(e)(2)(E). We concluded that a more general test may be appropriate in certain circumstances, such as where, for example, technical or data limitations limit the ability of a state (or the EPA) to undertake a robust comparison using the test set out in 40 CFR 51.308(e)(3).

[5] While the Regional Haze Rule directs the state to conduct the air quality modeling study, as described in section III.C.2, the EPA itself conducted such a study for CAIR and through a notice-and-comment rulemaking codified the conclusion that the stated criteria were met by adding specific provisions allowing the use of CAIR in lieu of source-specific BART. We have now done the same for the Transport Rule.

[6] The ''decline'' is relative to modeled future baseline visibility conditions in the absence of any BART or alternative program control requirements.

[7] *See North Carolina* v. *EPA,* 531 F.3d 896; modified by 550 F.3d 1176 (D.C. Cir. 2008).

On August 8, 2011, EPA promulgated the Transport Rule, which was to replace CAIR.[8] As promulgated, the Transport Rule would have addressed emissions in 2012 and later years and would have left the requirements of CAIR and the CAIR FIPs in place to address emissions through the end of 2011. The D.C. Circuit, however, on December 30, 2011, stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR FIPs) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City* v. *EPA,* No. 11–1302 (Order).

Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, as allowed under the then-current BART provisions at 40 CFR 51.308(e)(4). These states also relied on the improvement in visibility expected to result from controls planned or already installed on sources in order to meet CAIR provisions in developing their long-term visibility strategy. In addition, many states relied upon their own CAIR SIPs or the CAIR FIPs for their states as legal justification for these planned controls and consequently did not include separate enforceable measures in their long-term strategies (a required element of a regional haze SIP submission) to ensure these EGU reductions. These states also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for the first 10-year implementation period of the regional haze program.

In summary, many of the states in the CAIR-affected region have based a number of required elements of their regional haze programs on CAIR. However, as CAIR has been remanded and only remains in place temporarily, we cannot fully approve these regional haze SIP revisions that have relied on the now-temporary reductions from CAIR. Although CAIR is currently in effect as a result of the December 30, 2011 Order by the U.S. Court of Appeals for the D.C. Circuit staying the Transport Rule, this does not affect the substance of the D.C. Circuit's ruling in 2008 remanding CAIR to the EPA.

4. The Transport Rule and Regional Haze SIPs

The Transport Rule as promulgated would establish Transport Rule trading programs to replace the CAIR trading programs and would sunset the requirements of CAIR and the CAIR FIPs. The Transport Rule, as promulgated, requires 28 states in the eastern half of the United States to significantly improve air quality by reducing EGU SO_2 and NO_X emissions that cross state lines and significantly contribute to ground-level ozone and/or fine particle pollution in other states. The rule allows allowance trading among covered sources, utilizing an allowance market infrastructure modeled after existing allowance trading programs. The Transport Rule allows sources to trade emissions allowances with other sources within the same program (*e.g.,* ozone season NO_X) in the same or different states, while firmly constraining any emissions shifting that may occur by establishing an emission ceiling for each state.

In our proposal, we described a technical analysis that we conducted to determine whether compliance with the Transport Rule would satisfy regional haze BART-related requirements. This technical analysis is the basis of this final action in which we are finalizing our determination that the Transport Rule achieves greater reasonable progress towards the national goal of achieving natural visibility conditions than source-specific BART. For this final rule, an updated sensitivity analysis was conducted to account for subsequent revisions to certain state budgets in the Transport Rule. This analysis is described in section III.B.4 of this notice.

B. Summary of the EPA Response to General and Legal Issues Raised in Public Comments

The EPA has based its determination that the Transport Rule will achieve greater reasonable progress than BART on the approach used by the EPA in evaluating whether a similar program, CAIR, would satisfy the regional haze BART-related requirements. As noted above, the Regional Haze Rule, promulgated in 1999, provides states with the flexibility to adopt an emissions trading program rather than requiring source-by-source BART. 40 CFR 51.308(e)(2). Some commenters supported our general approach and agreed that the Transport Rule will provide for greater reasonable progress. Other commenters, however, disagreed with our conclusion that the Transport Rule can be used as an alternative to BART. These commenters argued that we lack authority to make such a determination and that we cannot rely on the Transport Rule because of the current stay of that rule, and that the Transport Rule does not meet the necessary regulatory requirements for an alternative program in lieu of BART. Some commenters argued that we could not conclude that the Transport Rule provides for greater reasonable progress without considering each state's reasonable progress goals. Other commenters took the position that we should fully approve the regional haze SIPs that relied on CAIR to satisfy certain regional haze requirements and that our proposed limited disapproval of the regional haze SIPs was unnecessary.

1. Authority for an Alternative Trading Program

As described above, in 2005 (70 FR 39104) the EPA amended its Regional Haze Rule to provide that states participating in the CAIR cap-and-trade programs need not require affected BART-eligible EGUs to install, operate and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). As EPA noted in explaining its reasons for adopting this approach, ''[nothing] in the CAA or relevant case law prohibits a State from considering emissions reductions required to meet other CAA requirements when determining whether source-by-source BART controls are necessary to make reasonable progress. Whatever the origin of the emission reduction requirement, the relevant question for BART purposes is whether the alternative program makes greater reasonable progress.'' 70 FR at 39143.

The EPA's authority to establish non-BART alternatives in the regional haze program and the specific methodology outlined above for assessing such alternatives have been previously challenged and upheld by the D.C. Circuit. In the first case challenging the provisions in the Regional Haze Rule allowing for states to adopt alternative programs in lieu of BART, the court affirmed our interpretation of CAA section 169A(b)(2) as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development* v. *EPA,* 398 F.3d 653, 660 (D.C. Cir. 2005) (''*CEED*'') (finding reasonable the EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006) (''*UARG*''), the court specifically upheld our determination that states could rely on CAIR as an alternative program to BART for EGUs in the CAIR-affected states. The court concluded that the EPA's two-pronged test for determining whether an alternative program achieves greater

[8] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone. 76 FR 48208.

reasonable progress was a reasonable one and also agreed with EPA that nothing in the CAA required the EPA to ''impose a separate technology mandate for sources whose emissions affect Class I areas, rather than piggy-backing on solutions devised under other statutory categories, where such solutions meet the statutory requirements.'' *Id.* at 1340.

Notwithstanding the decisions of the D.C. Circuit, several commenters argued that the plain language of the CAA precludes the EPA from allowing an alternative to BART. In their comments, these groups claimed that there is no statutory authority to exempt a source from BART, except as provided for in CAA section 169A(c). Under the interpretation of the CAA urged by these commenters, BART must be required at each BART source that causes or contributes to visibility impairment at any Class I area. The commenters point to recent decisions post-dating *CEED* and *UARG* in support of their arguments.

The commenters' arguments that the plain language of the CAA precludes reliance on the Transport Rule to satisfy the BART requirements were raised in *UARG* v. *EPA* and rejected by the D.C. Circuit when it denied the petitions for review of the EPA's determination that CAIR provided for greater reasonable progress than BART. While the commenter argues that the court's decision ''has been undermined by subsequent D.C. Circuit decisions,'' we disagree. The decisions cited by the commenter, *North Carolina* v. *EPA,* 531 F.3d 896, 906–08 (D.C. Cir. 2008) and *NRDC* v. *EPA,* 571 F.3d 1245, 1255–58 (D.C. Cir. 2009) address the requirements of sections 110(a)(2)(D)(i)(I) and 172(c)(1), respectively. Given the differences between the language of these statutory provisions and that of section 169A(b)(2), the courts' interpretation of these other provisions of the CAA do not undermine the two previous rulings of the D.C. Circuit interpreting the visibility provisions of the Act. Similarly, the Supreme Court's conclusions in *Massachusetts* v. *EPA,* 549 U.S. 497, 528–29 (2007) regarding the meanings of ''each'' and ''any'' do not conflict with or impact the EPA's reading of section 169A(b)(2) of the CAA or the D.C. Circuit's conclusion that the agency's interpretation of the statute is a reasonable one. As the *CEED* court explained, the EPA interprets this provision to mean that ''each SIP's 'emission limits, schedules of compliance, and other measures' must 'include' BART only 'as may be necessary to make reasonable progress toward' national visibility goals.'' 398 F.3d 653, *quoting* 42 U.S.C. 7491(b)(2); *see also Central Arizona Water Conservation District* v. *EPA,* 990 F.2d 1531, 1543 (9th Cir. 1993) (upholding the same interpretation of section 169A(b)(2)). We do not agree, therefore, that the EPA's regulations allowing for the adoption of a trading program that provides for greater reasonable progress than BART in place of source-specific BART are inconsistent with the CAA.

These commenters also argue that the EPA can exempt sources from BART only if the EPA complies with the requirements of CAA section 169A(c)(1). This provision of the CAA allows the EPA to exempt a source from the BART requirements, by rule, upon a determination that the source is not reasonably anticipated to cause or contribute to significant visibility impairment. As the commenters note, the appropriate Federal Land Manager(s) must agree with the exemption before it can go into effect.

We do not agree that the provisions governing exemptions to BART apply to our determination that the Transport Rule will make greater reasonable progress than BART. Section 169A(b)(2) of the CAA requires each visibility SIP to contain ''such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the national goal * * * including * * * a requirement that [certain major stationary sources] * * * procure, install, and operate * * * [BART].'' Based on this language, in 1999, the EPA concluded that if an alternative program can be shown to make greater reasonable progress toward eliminating or reducing visibility impairment, then installing BART for the purpose of making reasonable progress toward the national goal is no longer necessary. This interpretation of the visibility provisions of the CAA has been upheld three times by the courts, as noted above.

We also received comments arguing that the EPA cannot rely on the Transport Rule as an alternative to BART because the emission reductions do not meet the requirement of 40 CFR 51.308(e)(2)(iv) which provides that ''the emission reductions resulting from the emissions trading program * * * will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.''

We do not agree with the comments that the emissions reductions resulting from the Transport Rule must be ''surplus to those measures adopted to meet requirements of the CAA as of the baseline date of the SIP.'' We note that the requirements of 40 CFR 51.308(e)(2) are not directly applicable to this action, as the special provisions in the Regional Haze Rule addressing the Transport Rule are codified at 40 CFR 51.308(e)(4). Nonetheless, our determination that the Transport Rule will result in greater visibility improvement than BART is fully consistent with the requirement in 40 CFR 51.308(e)(2)(iv). In promulgating the Regional Haze Rule in 1999, the EPA explained that the ''baseline date of the SIP'' in this context means ''the date of the emissions inventories on which the SIP relies,'' 64 FR 35742, which is ''defined as 2002 for regional haze purposes,'' 70 FR 39143. Any measure adopted after 2002 is accordingly ''surplus'' under 40 CFR 51.308(e)(2)(iv). This is consistent with the discussion in the preamble to the 1999 Regional Haze Rule indicating that the regional haze program ''is being promulgated in a manner that facilitates integration of emission management strategies for regional haze with the implementation of programs for [the 1997 ozone and $PM_{2.5}$] NAAQS.'' 64 FR 35719. The EPA took this approach in the Regional Haze Rule to allow measures needed to attain the then new NAAQS to be ''counted'' as making ''reasonable progress'' toward the visibility goal. The Transport Rule was adopted to help areas come into attainment with and maintain the 1997 ozone and PM NAAQS, as well as the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA accordingly does not view the requirement in 40 CFR 51.308(e)(2)(iv) as limiting our ability to demonstrate that the Transport Rule reductions are surplus, as defined in the Regional Haze Rule.

2. Effect of the Transport Rule Stay

Several commenters contended that the EPA cannot rely on the Transport Rule as a BART alternative because implementation of the rule has been stayed. These commenters argue that an alternative program in place of BART must constitute a ''requirement,'' and be enforceable, and that as long as the Transport Rule is stayed, it cannot qualify as a ''requirement'' nor can it be enforced. These commenters also claim that because the rule may change if affirmed only in part, the EPA cannot find that the Transport Rule will make greater reasonable progress than BART.

We do not agree that the EPA cannot rely on the Transport Rule because of the stay imposed by the D.C. Circuit. We base this conclusion on both the structure of 40 CFR 51.308(e)(4) and on the long-term focus of our analysis underlying today's rule.

Neither our regulations in 2005 addressing CAIR, nor our regulations in this rule addressing the Transport Rule, require states to participate in or implement these programs or to otherwise include enforceable measures in their *regional haze* SIPs. In 2005, having determined that CAIR would provide for greater reasonable progress toward the national goal than would BART, the EPA promulgated regulations providing that a state participating in one of the CAIR trading programs ''need not require'' EGUs to put on BART controls. Similarly, our regulations in this rule provide that a state subject to a Transport Rule FIP (or approved Transport Rule SIP) need not require BART controls on its EGUs. Accordingly, today's regulations addressing the Transport Rule are not ''requirements'' that a state participate in the interstate transport trading programs. Similarly, a *regional haze* SIP or FIP that relies on 40 CFR 51.308(e)(4) does not impose enforceable requirements on EGUs. However, a state may take advantage of this provision only if it is subject to an underlying Transport Rule FIP (or SIP approved as meeting the requirements of the trading program). We note that the underlying Transport Rule FIP or SIP does contain the applicable requirements that will ensure that the emissions reductions from the Transport Rule will occur.

We also note that while the Transport Rule is not currently enforceable, the air quality modeling analysis underlying our determination that the Transport Rule will provide for greater reasonable progress than BART is based on a forward-looking projection of emissions in 2014. However, any year up until 2018 (the end of the first regional haze planning period) would have been an acceptable basis for comparing the two programs under the Regional Haze Rule. *See* 40 CFR 51.308(e)(2)(iii). We anticipate that requirements addressing all significant contribution and interference with maintenance identified in the Transport Rule will be implemented prior to 2018.

We do not agree with the comment that because the Transport Rule is subject to review by the D.C. Circuit, we cannot move ahead with our determination that it provides for greater reasonable progress than BART. We do not view the stay imposed by the D.C. Circuit pending review of the underlying rule as undermining our conclusion that the Transport Rule will have a greater overall positive impact on visibility than BART both during the period of the first long-term strategy for regional haze and going forward into the future. We recognize, as one commenter suggests, that we may be obliged to revisit the regional haze plans that rely on the Transport Rule if the rule is not upheld, or if it is remanded and subsequently revised. However, we do not consider it appropriate to await the outcome of the D.C. Circuit's decision on the Transport Rule before moving forward with the regional haze program as we believe the Transport Rule has a strong legal basis, and given the judicial decree requiring the EPA to meet its statutory obligations to have a FIP or an approved SIP meeting the Regional Haze Rule requirements in place for most states before the end of 2012.

3. Rationale for Disapproval of SIPs Based on CAIR

We received comments that our proposed limited disapproval of the regional haze SIPs that rely on CAIR and the proposed FIPs is not necessary. Commenters noted that CAIR remains in place and that SIPs that rely on CAIR are fully consistent with our existing regulations. Some commenters suggested that we revise the Regional Haze Rule to allow states to rely on either CAIR or the Transport Rule to meet the BART requirements.

While the regional haze program is a long-term program that requires states to submit SIPs every 10 years to assure continued reasonable progress toward natural background conditions, the BART requirements or alternatives to BART must be fully implemented by 2018. The required establishment of BART limits, or an alternative to BART, is accordingly undertaken only once. Although CAIR is currently in place as a result of the D.C. Circuit's stay of the Transport Rule, we do not anticipate that CAIR will continue in effect indefinitely. As a result, our determination that CAIR provides for greater reasonable progress than BART is no longer valid. This is because, as a general matter, any source required to install BART controls must maintain the BART control equipment and meet the BART emission limit established in the SIP so long as the source continues to operate. *See* 40 CFR 51.308(e). As BART would result in emission reductions going forward beyond 2018, our determination that CAIR provides for greater reasonable progress than BART was based on the assumption that the reductions required by CAIR would be enforceable requirements that would also apply going forward to 2018 and beyond. That assumption is no longer appropriate. We are issuing a limited disapproval rather than a full disapproval, however, to allow the states to rely on the emission reductions from CAIR for so long as CAIR is in place.

4. The Relationship Between a Better-Than-BART Determination and Reasonable Progress

Each state with a Class I area is required to set goals for each Class I area that provide for reasonable progress towards improving visibility. There must be one goal for the 20 percent best visibility days and one goal for the 20 percent worst visibility days. States take into account a number of factors in establishing reasonable progress targets, including in some cases an analysis of the measures needed to achieve the ''uniform rate of progress'' [9] over the 10-year period of the SIP and a determination of the reasonableness of such measures. 40 CFR 51.308(d)(1). The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural background conditions.

Several commenters argued that our determination that the Transport Rule provides for greater reasonable progress than BART is improper because it considers BART in isolation, without reference to the consideration of the reasonable progress goals in the regional haze plans. These commenters contend that BART is critical to the state's ability to reach its reasonable progress goals and that the EPA should have considered the impact of our proposed determination in instances where the states relied on emissions reductions consistent with presumptive BART to meet reasonable progress goals.

The EPA disagrees with the argument that we cannot compare the visibility improvements from Transport Rule against those from BART without considering the reasonable progress goals of each affected regional haze SIP. BART is one measure for addressing visibility impairment, but it is not ''the mandatory vehicle of choice.'' CEED, 398 F.3d at 660. As such, BART is not a required element of the regional haze SIPs so long as an appropriate alternative achieves greater reasonable progress.

The commenters' suggestion that reasonable progress goals are defined and that each regional haze SIP must accordingly ensure a certain rate of progress toward natural visibility also mischaracterizes the regional haze program. As noted above, the reasonable

[9] For each Class I area, the uniform rate of progress is based on the calculation of the steady rate of improvement in visibility needed to achieve natural background conditions by 2064.

progress goals for each Class I area are set by the states. States, both in and out of the CAIR region, set their reasonable progress goals based, in part, on anticipated reductions in emissions due to CAIR. In setting reasonable progress goals, these states estimated future emissions in 2018 from a number of sources and source categories, including emissions from EGUs. For sources in the CAIR region, states relied on emissions reductions from CAIR—not BART—to estimate future EGU emissions. As a result, source-specific BART across the CAIR region is clearly not critical to the states' ability to meet the goals in their SIPs. For the small handful of states that were not subject to CAIR but are now subject to the Transport Rule, today's determination that the Transport Rule provides for greater reasonable progress than BART gives those states the opportunity to consider revising their regional haze SIPs to substitute participation in the Transport Rule for source-specific BART. Whether such a revision meets the requirements of the Regional Haze Rule, including the requirement that a plan include such measures as may be necessary to make reasonable progress toward the national goal, would be addressed in a notice and comment rulemaking that would provide an opportunity for review of the adequacy of such an approach. We disagree with the commenters' statement, however, that source-specific BART as a general matter is necessary to ensure reasonable progress.

III. Technical Analysis Supporting the Determination of the Transport Rule as an Alternative to BART

A. What analysis did we rely on for our proposed determination?

The technical analysis that the EPA relied on for our proposed and now final determination that the Transport Rule is better than BART is described in detail in the preamble of the proposed rule and in the Technical Support Document (TSD).[10] To provide context for the summary of the public comments and our responses to them, we are providing a summary of the technical analysis in the following sections.

1. Application of the Two-Pronged Test

The two-pronged test for determining if an alternative program achieves greater reasonable progress than source-specific BART is set out in the Regional Haze Rule at 40 CFR 51.308(e)(3). The underlying purpose of both prongs of the test is to assess whether visibility at Class I areas would be better with the alternative program in place than without it. Under the first prong, visibility must not decline at any affected Class I area on either the best 20 percent or the worst 20 percent days as a result of implementing the Transport Rule; and, under the second prong the 20 percent best and 20 percent worst days should be considered in determining whether the alternative program under consideration (in the case of this rulemaking, the Transport Rule) produces greater average improvement than source-specific BART over all affected Class I areas. Together, these tests ensure that the alternative program provides for greater reasonable progress than would source-specific BART.

In applying the two-pronged test to the Transport Rule control scenario and the source-specific BART control scenario, we used a future (2014) projected baseline. The 2014 baseline does not include the Transport Rule, BART, or CAIR control programs. As described in the preamble to the proposed rule, the 2014 baseline allows a comparison of visibility conditions as they are expected to be at the time of the program implementation, but in the absence of the program. This ensures that the visibility improvement or possible degradation is due to the programs being compared—source-specific BART and the Transport Rule alternative—and not to other extrinsic factors. Also, under the Regional Haze Rule any program adopted after 2002 is considered ''surplus'' and eligible to be counted as all or part of an alternative program in place of BART.

2. Identification of Affected Class I Areas

As described above, under the second prong of the test, the visibility comparison is over all ''affected'' Class I areas. The EPA added the term ''affected'' to clarify that visibility need not be evaluated nationwide. 71 FR 60620. We considered two approaches to identify the Class I areas ''affected'' by the Transport Rule as an alternative control program to source-specific BART. First, we identified 140 Class I areas represented by 96 Interagency Monitoring of Protected Visual Environments (IMPROVE) monitors in the 48 contiguous states with sufficiently complete monitoring data available to support the analysis. In the first ''eastern'' approach, we identified as affected Class I areas the 60 Class I areas contained in the eastern portion of the Transport Rule modeling domain. The second approach we considered was a ''national'' approach in which visibility impacts on 140 Class I areas across the 48 contiguous states were evaluated (including the 60 contained within the Transport Rule region). Consideration of this national region accounted for the possibility that the Transport Rule might have the effect of increasing EGU emissions in the most western portion of the United States due to shifts in electricity generation or other market effects. We noted that the ''eastern'' Transport Rule modeling grid used a horizontal resolution of 12 km (all 60 ''eastern'' Class I areas were contained within the 12 km grid). The modeling grid for areas outside of the eastern Transport Rule region used a more coarse horizontal resolution of 36 km.

We requested comment on whether the ''affected Class I areas'' should be considered to be the 60 Class I areas located in the Transport Rule eastern modeling domain, the larger set of 140 Class I areas in the larger national domain, or some other set. We noted that given the modeling results, the choice between the 60 Class I areas or the 140 Class I areas did not affect our proposed conclusion that both prongs of the two-pronged test are met.

3. Control Scenarios Examined

The Transport Rule requires 28 states in the eastern half of the United States to reduce EGU SO_2 and NO_X emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. BART, on the other hand, is applicable nationwide and covers 26 industrial categories, including EGUs, of a certain vintage. In our comparison, we sought to determine whether the Transport Rule cap-and-trade program for EGUs will achieve greater reasonable progress than would BART for EGUs only. Therefore, we examined two relevant control scenarios. The first control scenario examined SO_2 and NO_X emissions from all EGUs nationwide after the application of BART controls to all BART-eligible EGUs (''Nationwide BART''). In the second scenario, EGU SO_2 and NO_X emissions reductions attributable to the Transport Rule were applied in the Transport Rule region and BART controls were applied to all BART-eligible EGUS outside the Transport Rule region (''Transport Rule + BART elsewhere''). For the first prong of the test, the ''Transport Rule + BART elsewhere'' scenario was compared to the 2014 future year base case. The comparison to the 2014 future year ''Base Case'' allows the EPA to ensure that the Transport Rule would not cause degradation in visibility from conditions predicted for the year 2014 in the

[10] Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket EPA–HQ–OAR–2011–0729.

absence of the Transport Rule, BART and CAIR.

For both the ''Nationwide BART'' scenario and the ''Transport Rule + BART elsewhere'' scenario, we modeled the presumptive EGU BART limits for SO_2 and NO_X emission rates as specified in the BART Guidelines (Guidelines for BART Determinations Under the Regional Haze Rule, 70 FR 39104, July 6, 2005), unless an actual emission rate at a given unit with existing controls is lower. In the latter case, we modeled the lower emission rates. Our analysis assumed that all BART-eligible EGUs were actually subject to BART requirements and that presumptive BART limits would be applied to 100 megawatt (MW) EGUs for SO_2 and 25 MW EGUs for NO_X, regardless of the magnitude of their annual total emissions. In our analysis, in both scenarios we constrained certain EGUs by emission limits other than presumptive limits due to a proposed or final regional haze SIP, a proposed or final regional haze FIP, a final consent decree, or state rules. Where we had evidence of more stringent emission limits than the presumptive BART limits, we used them. These units and their emission limits are detailed in the TSD.

There are five states that are subject to the Transport Rule requirements during the ozone season only (Oklahoma, Arkansas, Louisiana, Mississippi and Florida). For these states, in the ''Transport Rule + BART elsewhere'' scenario post-combustion NO_X controls were assumed to operate outside of the ozone season only when required to do so for a reason other than Transport Rule requirements, *e.g.,* a permit condition or a provision of a consent decree. In the ''National BART'' scenario, BART NO_X controls were assumed to operate year-round.

4. Emission Projections

To estimate emissions expected from the scenarios described in section IV, we used the Integrated Planning Model (IPM).[11] The IPM was used in this case to evaluate the emissions impacts of the described scenarios limiting the emissions of SO_2 and NO_X from EGUs. The IPM projections of annual NO_X and SO_2 emissions from EGUs for the ''Transport Rule + BART elsewhere'' control scenario were used as inputs to the air quality model to assess the visibility impacts of the emission changes. The IPM projections were based on the state budgets prescribed in the final Transport Rule published on August 8, 2011, and the supplemental proposal published on July 11, 2011.[12] We noted that on October 14, 2011, the EPA issued a proposed notice that would increase NO_X and SO_2 budgets for certain states in accordance with revisions to certain unit-level input data. 76 FR 63860. We requested comment on the potential effect of the proposed increases to state budgets. We noted that even with the proposed increases to certain state budgets, we believed that the two-pronged test is satisfied given the still-substantial reductions in emissions under the Transport Rule.

5. Air Quality Modeling Results

To assess the air quality metrics that are part of the two-pronged test, we used the IPM emission projections as inputs, to an air quality model to determine the impact of ''Transport Rule + BART elsewhere'' and ''Nationwide BART'' controls on visibility in the affected Class I areas. To project air quality impacts we used the Comprehensive Air Quality Model with Extension (CAMx) version 5.3. The air quality modeling analysis and related analyses to project visibility improvement are described in more detail in the TSD for the Transport Rule.[13] The visibility projections for each Class I area are presented in the TSD for our proposed action.

We proposed that the ''Transport Rule + BART elsewhere'' control scenario passed the first prong of the visibility test considering affected Class I areas located in both the ''eastern'' region of 60 Class I areas and the ''national'' region of 140 Class I areas We also proposed our determination that the ''Transport Rule + BART elsewhere'' alternative measure passed the second prong of the test that assesses whether the alternative results in greater average visibility improvement at affected Class I areas compared to the ''Nationwide BART'' scenario. The ''Transport Rule + BART elsewhere'' alternative passed the second prong of the test, regardless of which way affected Class I areas are identified.

B. Summary of the EPA Responses to Comments on the Technical Analysis

Many comments supported the EPA's technical analysis and our determination that the Transport Rule satisfies the requirements for an alternative to source-specific BART. Other commenters raised objections to the EPA's determination. Some of these were general legal objections related to the EPA's legal authority for its action and its interpretation of authorizing regulations and statutes. The EPA's response to those general legal objections is discussed above in section III.A. Other objections raised technical issues related to the EPA's emissions and air quality modeling scenarios that were used to compare the results of the Transport Rule control scenario with the source-specific BART control scenario. In this section of the preamble we provide an overview of the EPA's review of these technical comments. Our responses are discussed in detail in the Response to Comments document, which is included in the docket for this rulemaking.

1. Comments Related to the Emissions Scenarios Used in the EPA's Analysis

As noted above, the EPA developed two emissions scenarios: A 2014 ''Nationwide BART'' scenario and a 2014 ''Transport Rule + BART elsewhere'' scenario. Nationwide emissions were substantially lower under the ''Transport Rule + BART elsewhere'' scenario. Some commenters asserted that the emissions results for these two scenarios were skewed in favor of the Transport Rule. These commenters asserted that the EPA underestimated the emissions reductions from BART, and overestimated the emission reductions from the Transport Rule. These commenters raise issues generally with the use of presumptive BART limits in the ''Nationwide BART'' scenario and questioned whether the EPA correctly applied the presumptive BART limits.

The EPA disagrees with commenters asserting that the presumptive BART limits were inappropriate for use in this analysis. While the EPA recognizes that a case-by-case BART analysis may, in some source-specific assessments, result in emission limits more stringent than the presumptive limits, these limits are reasonable and appropriate for use in assessing regional emissions reductions from the BART scenario. This has been the EPA position since 2005. 71 FR 60619 (''the presumptions represent a reasonable estimate of a stringent case BART * * * because * * * they would be applied across the board to a wide

[11] Extensive documentation of the IPM platform may be found at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/transport.html.*

[12] *See* Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone 76 FR 48208 (August 8, 2011). The ozone season state budgets for the states affected by the supplemental proposal published on July 11, 2001 (76 FR 40662) are included in the ''Transport Rule + BART elsewhere'' control scenario.

[13] *See* Air Quality Modeling Final Rule Technical Support Document, U.S. EPA, June 2011, which is found at: *http://www.epa.gov/airtransport/pdfs/AQModeling.pdf.*

variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas''). Moreover, as discussed in detail in the Response to Comment document, the EPA believes that these comments overestimate the emissions reductions that would be associated with case-by-case BART because the commenters' assertions of ''best'' technology for BART ignore other factors, including cost of control and resulting visibility improvement, that are critical components of a source-specific BART analysis.

The EPA also received numerous comments concerning specific units for which the commenters believed the BART limits for SO_2 had been incorrectly applied in IPM. Our review of these comments, which is presented in detail in the Response to Comments document, shows that (with minor exceptions) the EPA correctly applied these presumptive limits. After reviewing these comments and the IPM outputs, we conclude that many of these comments stemmed from an apparent misunderstanding of the EPA's application of the presumptive limits in IPM. Some of the unit-level comments pertained to units less than 100 MW for which the presumptive limits did not apply. Other comments pertained to units that did not meet both the 95 percent removal efficiency and the 0.15 lb/MMBtu rate. For BART-affected units greater than or equal to 100 MW, the EPA's IPM modeling required that they meet a SO_2 emission rate limit of 0.15 lbs/MMBtu *or* a removal efficiency of 95 percent. As sources are only required to comply with one of these metrics (emission rate or percent removal), the IPM correctly determined that some BART sources could comply with an emission rate higher than 0.15 lb/MMBtu (while meeting the 95 percent FGD removal efficiency requirement) and some could comply with a removal efficiency less than 95 percent (while meeting the emission rate requirement).

The EPA also disagrees with the commenters' assertion that our application of presumptive limits for NO_X should have provided for the installation of add-on equipment such as selective catalytic reduction (SCR). For all types of boilers other than cyclone units, the presumptive NO_X limits in the EPA's BART guidelines are based only on the use of current combustion control technology including low NO_X burners, over-fire air, and coal reburning.[14] 70 FR 39134.

Finally, the EPA disagrees with commenters who expressed concerns that the ''no-CAIR'' base case was inappropriate for use in this analysis. The EPA agrees with commenters' observation that the 2014 base case leads to emission increases relative to current emissions. However, as explained in detail in the preamble to the final Transport Rule, the EPA believes this is a reasonable and appropriate case to use for estimating emissions reductions that are attributable to the Transport Rule, and for estimating air quality concentrations in absence of the Transport Rule. 76 FR 48223.

2. Identification of Affected Class I Areas

Under the Regional Haze Rule, the reasonable progress achieved by an alternative program in ''affected Class I areas'' is compared to the reasonable progress achieved by source-specific BART. In our proposal, the EPA requested comment on whether the ''affected Class I areas'' should be considered to be (1) The 60 Class I areas located in the Transport Rule eastern modeling domain, (2) the larger set of 140 Class I areas, or (3) some other set. We noted that our air quality modeling results showed that the choice between the 60 Class I areas or the 140 Class I areas did not affect our proposed conclusion that both prongs of the two-pronged test are met.

Some commenters agreed that the EPA can properly rely on an assessment of the 60 Class I areas without referring to the results of the additional 80 Class I areas. These commenters noted, as did the EPA, that because both assessment approaches support the Transport Rule as a lawful and reasonable BART alternative, the EPA may appropriately confirm its determination based on either approach. Other commenters argued that the EPA improperly averaged across all Class I areas. These commenters argued that both the 60 Class I area region and the 140 Class I area region are too broad. These commenters presented information illustrating the ''Nationwide BART'' scenario to be superior to the Transport Rule alternative if the EPA averaged visibility improvement at the 27 Class I areas west of the Mississippi River but east of the Rocky Mountains. These commenters asserted that the EPA should not average across states, but rather should assume Transport Rule changes in one state at a time, and average the results for areas in (and nearby) that state.

The EPA agrees with comments supporting our approach to identifying the ''affected'' Class I areas. The EPA agrees that in either case, the analysis shows that the two-pronged test for determining a BART alternative is satisfied. The EPA does not agree that it is necessary to evaluate results for a sub-region such as the 27 Class I areas suggested by some commenters. Given that the Transport Rule affects emissions and air quality over a large region, the EPA believes it is reasonable to consider that entire region in evaluating the Class I areas that are also ''affected'' by this rule. The possibility of greater visibility improvement due to source-specific BART in specific Class I areas within the region of ''affected Class I areas'' is inherent to the two-pronged test that has been upheld by the D.C. Circuit Court. As long as the average visibility improves over the *entire* region and no Class I area experiences degradation, the alternative is an appropriate and approvable alternative to source-specific BART. *See* 471 F.3d 1333 (D.C. Cir. 2006) (''*UARG*'') (''nothing in § 169A(b)'s 'reasonable progress' language requires as least as much improvement in each and every individual area as BART itself would achieve'').

3. Ozone Season-Only Transport Rule States

Some commenters noted that five states—Arkansas, Florida, Louisiana, Mississippi and Oklahoma—are covered by the Transport Rule ozone season only, and thus these states are only required to hold allowances and limit statewide NO_X emissions during May through September. Commenters expressed concerns that while imposition of BART would require year-round operation of NO_X controls, under the Transport Rule there would be no assurance that NO_X emission controls would operate during the remaining 7 months of the year. Accordingly, the commenters asserted that for these states the Transport Rule is not ''better than BART'' because it would allow for a potential degradation during these months, and thus the EPA should consider the Transport Rule to fail the first prong of the two-pronged test.

The EPA carefully considered this comment, and we reviewed the results of our technical analysis to evaluate whether such seasonal differences could occur. For programs which regulate ozone season NO_X only, seasonal differences in the emissions rate (lb/

[14] The EPA notes that a BART determination made under the regional haze program is distinct from a best available control technology (BACT) determination made under the prevention of significant deterioration (PSD) program. 42 U.S.C. 7475. The fact that a control technology has been determined to be BART does not mean that the same controls would be found to meet the requirements for BACT.

MMBtu) can be seen where a source installs post-combustion controls such as selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR). It is probable that source owners would not operate the controls in non-ozone season months to avoid the extra cost of control. These effects are indeed seen in the data reported to the EPA. However, where a program results in the imposition of combustion controls such as low-NO_X burners and overfire air, the controls are an integral part of the operational design of the EGU. Accordingly, where combustion controls are installed in response to an ozone season-only requirement, the EPA does not expect to see seasonal differences in the lb/MMBtu NO_X emission rate.

Our review of the IPM predictions of how EGUs are likely to comply with the Transport Rule indicated that in the ''Transport Rule + BART elsewhere'' scenario, NO_X control in the five ozone season-only states is achieved predominantly by combustion controls rather than post-combustion controls. In the Transport Rule scenario, for four of the five states (Arkansas, Louisiana, Mississippi and Oklahoma), the EPA projects that any additional NO_X controls resulting from the Transport Rule would be combustion controls only. Furthermore, as explained above, for the ''Nationwide BART'' control scenario we applied the presumptive NO_X limits to all BART-eligible sources nationwide that were not already equipped with post-combustion controls. According to the EPA's BART guidelines, for all types of boilers other than cyclone units the presumptive BART limits for NO_X are based on the use of current combustion control technology.[15] 70 FR 39134. For BART sources already equipped with post-combustion controls, we assumed under BART those controls would operate year-round. Therefore, the ''Nationwide BART'' scenario would result in generally uniform emission rates throughout the year in the five ozone season-only states. As a result, with the exception of Florida, there is no seasonal difference in NO_X emission rates between the ''Transport Rule + BART-elsewhere'' scenario and the ''Nationwide BART'' scenario. In Florida, the one instance where IPM indicates a season-dependent difference between the two control scenarios, there are some EGUs with existing post-combustion controls (SCR) that the EPA projects would not operate at all unless incentivized to do so by either a source-specific BART requirement or by the Transport Rule, and under the Transport Rule would operate only during the ozone season. Our analysis of the two scenarios appropriately considered this seasonal difference by accounting for higher NO_X emissions from those Florida units outside of the ozone season when these controls are projected not to operate in the ''Transport Rule + BART elsewhere'' scenario. That is, our analysis assumed that post-combustion NO_X controls would operate year-round under the ''Nationwide BART'' scenario and only during May through September in the ''Transport Rule + BART elsewhere'' scenario. When we analyzed the overall regional emissions reductions under the two scenarios, this did not affect our conclusion that the two-pronged test was satisfied. This outcome is very understandable because over a geographic region this small relative decrease during part of the year in emissions of NO_X in the ''Transport Rule + BART elsewhere'' scenario compared to the ''Nationwide BART'' scenario has much less effect than the visibility improvement attributable to the very large relative decrease in SO_2 emissions between the two scenarios.

Finally, the EPA notes that in a previous rulemaking that established that CAIR was ''better-than-BART'' it was also the case that some states subject to CAIR were subject only to ozone-season NO_X budgets. In that rulemaking, our air quality analysis had similar results and our final rule established that the CAIR could be relied upon as an alternative to source-specific BART for those states.

4. Comments Asserting That the EPA Needs To Re-Do the Analysis

Some commenters asserted that the EPA could not issue a final determination that the Transport Rule achieves greater reasonable progress than BART without conducting a new modeling analysis that would correct an error in the emissions for the ''Nationwide BART'' scenario and that would take into account certain adjustments that the EPA made to some state budgets under the Transport Rule after the air quality modeling runs were completed. Specifically, the commenters noted that the EPA acknowledged in the TSD for the proposal that the emissions analysis for the ''Nationwide BART'' scenario should have, but did not, apply presumptive BART controls on BART-eligible Gerald Gentleman Unit 2 and that the EPA acknowledged that the Transport Rule scenario in the analysis did not take into account budget revisions for a number of states that were published or proposed subsequent to the promulgation of the Transport Rule in August 2011. The commenters believe that because of these two acknowledged discrepancies in the emissions values used in the air quality modeling for the two scenarios, in combination with additional alleged errors, the EPA cannot issue a final determination unless and until a new analysis is conducted that takes these discrepancies into account.

The EPA disagrees that a re-analysis of the two-pronged test using new air quality modeling is necessary. As noted in the TSD, the EPA does not believe that the omission of Gerald Gentleman Unit 2 from the BART-eligible inventory of 489 units would affect the outcome of our national analysis.[16] This is because the emission reductions from a single EGU in the BART control scenario would not change the average visibility improvement across all affected Class I areas, which is the basis for our determination. The SO_2 emission reduction in question (roughly 12,000 tons of SO_2 per year) represents a relatively small emission change compared to the emissions from the area encompassed by Nebraska and the surrounding six states. Our response to other alleged errors in the BART inventory is presented in the Response to Comment document.

With respect to revisions in state budgets, as we discussed in the TSD accompanying the December 30, 2011 proposal, the post-analysis increases in the state budgets under the Transport Rule had a relatively small impact on the emissions comparison between the two scenarios. 76 FR 8227. We note that in addition to the Transport Rule revisions we discussed in the proposed rule, there have been proposed subsequent adjustments to state budgets. On February 21, 2012, based on comments received on its previous rulemaking proposal, the EPA published revisions to 2012 and 2014 state budgets in Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina and Texas, along with revisions to new unit set-asides in Arkansas, Louisiana and Missouri. 77 FR 10342 and 77 FR 10350.[17] While

[15] There are no coal-fired cyclone units located in any of the five ozone season-only states so the presumptive limits for cyclone units do not apply.

[16] Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket EPA–HQ–OAR–2011–0729. p. 10.

[17] These revisions were originally published in a direct final rule on February 21, 2012. 77 FR 10342. The EPA published a parallel proposal simultaneously with the direct final rule and

Continued

individual state adjustments vary, overall, the total budget increase over the entire Transport Rule region is very small. The EPA believes it is a reasonable expectation that these adjustments would lead to very small impacts on annual and 24-hour $PM_{2.5}$ concentrations and, as a consequence, would not have a meaningful impact on the two-pronged test satisfied by the analysis conducted for this rule. A technical analysis of these adjustments may be found in the docket (Docket ID No. EPA–HQ–OAR–2011–0729: Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Budgets).

After reviewing the public comments on the proposed rule, the EPA is finalizing its finding that the Transport Rule trading programs will provide greater progress towards regional haze goals than source-specific BART. This finding is based on the results of the two-pronged test for an alternative program. In this case, our analysis demonstrated that the trading programs of the Transport Rule do not cause degradation in any affected Class I area, thus passing the first prong of the test. The second prong of the test assesses whether the ''Transport Rule + BART elsewhere'' scenario results in greater average visibility improvement at affected Class I areas compared to the ''Nationwide BART'' scenario. The average visibility improvement of the ''Transport Rule + BART elsewhere'' alternative was greater than ''Nationwide BART'' on both the 20 percent best and 20 percent worst days, thus passing the second prong of the test. The determination that the Transport Rule trading programs will provide greater progress towards regional haze goals than source-specific BART applies only to EGUs in the Transport Rule trading programs and only for pollutants covered by the programs in each state. Accordingly, we are revising 40 CFR 51.308(e)(4) by essentially replacing the name of the CAIR with the name of the Transport Rule.

We are also finalizing our proposal that a state that chooses to meet the emissions reduction requirements of the Transport Rule by submitting a complete SIP revision that is approved as meeting the requirements of 40 CFR 52.38 and/or 52.39 also need not require BART-eligible EGUs in the state to install, operate and maintain BART for the pollutants covered by such a trading program in the state.

The results of the ''Transport Rule + BART elsewhere'' control scenario analysis demonstrate that the use of NO_X controls during ozone season only, in the states for which this Transport Rule requirement applies, results in greater visibility improvement than source-specific BART for NO_X. Thus, we are finalizing our proposal that a state in the Transport Rule region whose EGUs are subject to the requirements of the Transport Rule trading program only for ozone season NO_X is allowed to rely on our determination that the Transport Rule makes greater reasonable progress than source-specific BART for NO_X. The states to which this aspect of our final rule applies are Arkansas, Florida, Louisiana, Mississippi and Oklahoma.

IV. Reasonably Attributable Visibility Impairment (RAVI)

A. What did the EPA propose?

We proposed to preserve the language in the regional haze regulations at 40 CFR 51.308(e)(4) that allows states to include in their SIPs geographic enhancements to the trading program to address a situation where BART is required based on RAVI at a Class I area.[18]

B. Public Comments Related to RAVI

We received comments recommending that we explicitly state that the Transport Rule as an alternative to BART does not replace the BART analysis that is required to address RAVI certification. The commenter contends that the BART determination for RAVI needs to address the impairment at the specific Class I area or areas, a requirement that is not addressed by the demonstration of regionally-averaged visibility improvement. Other commenters agreed that RAVI BART is critical to remedying existing impairment and must be implemented. This commenter also pointed out that RAVI BART is reactive as it requires FLM to voluntarily take action to address an existing problem. As such, RAVI BART will not result in proactive permitting to avoid degradation and it cannot be relied on to prevent hot spots. Furthermore, according to this commenter, the EPA in its finding that CAIR was better-than-BART explained that even under a BART alternative ''* * * CAA section 169A(b)(2)'s trigger for BART based on impairment at any Class I area remains in effect, because a source may become subject to BART based on 'reasonably attributable visibility impairment' at any area'' (citing 40 CFR 51.302).

The EPA proposed to leave unchanged the existing regulatory language regarding geographic enhancements. The purpose of this language is to allow a market-based system to accommodate actions taken under the RAVI provisions. The EPA first adopted such language in the 1999 Regional Haze Rule, 64 FR 35757, and used it again in issuing regulations addressing our determination that CAIR provides for greater reasonable progress than BART, 70 FR 39156, and again in issuing regulations addressing trading program alternatives to BART in general, 71 FR 60612, 60627. In light of the fact that our proposal did not request comment on the interplay of the RAVI requirements in 40 CFR 51.302–306 with the requirements of the Regional Haze Rule, we are not adopting any clarifying interpretation at this time. As a result, this rulemaking alters neither the authority of a federal land manager to certify reasonably attributable visibility impairment nor the obligation of states (or EPA) to respond to a RAVI certification under 40 CFR Part 51 Subpart P (Protection of Visibility). We expect at a later date to clarify the scope of the RAVI requirements through a rule amendment, general guidance, or action on a SIP or FIP in the context of a specific RAVI case.[19] Whatever the form, we intend to provide an opportunity for public comment before applying a new interpretation.

C. Final Action on RAVI

In this final action we are preserving the language in the regional haze regulations at 40 CFR 51.308(e)(4) that allows states to include in their SIPs geographic enhancements to the trading program to accommodate a situation where BART is required based on RAVI at a Class I area. We are not adopting any clarifying interpretation of this language at this time, but we expect at a later date to clarify the scope of the RAVI requirements through a rule amendment, general guidance, or action on a SIP or FIP in the context of a specific RAVI case.

indicated it would withdraw the direct final rule if it received adverse comment. The EPA received adverse comments and on May 16, 2012 published a notice withdrawing the direct final rule before it went into effect. 77 FR 28785. As indicated in the parallel proposal, the EPA intends to take final action on the parallel proposal without providing an additional opportunity for public comment. 77 FR 10350.

[18] A geographic enhancement is a method, procedure, or process to allow a broad regional strategy, such as the Transport Rule cap-and-trade program, to satisfy BART for reasonable attributable impairment. For example, it could consist of a methodology for adjusting allowance allocations at a source which is required to install BART controls.

[19] A RAVI certification has been made for the Sherbourne County Generating Station (Sherco) in Minnesota, by the Department of the Interior on October 21, 2009.

V. Limited Disapproval of Certain States' Regional Haze SIPs

A. What did the EPA propose?

We proposed a limited disapproval of the regional haze SIPs that have been submitted by Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, and Texas. In separate notices, the EPA also has proposed a limited disapproval of the regional haze SIP submitted by Virginia that relied on CAIR (77 FR 3691), and has finalized a limited disapproval of the regional haze SIPs submitted by Kentucky (77 FR 19098), Tennessee (77 FR 24392), and West Virginia (77 FR 16937). These states, fully consistent with the EPA's regulations at the time, relied on CAIR requirements to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.

We did not propose to disapprove the reasonable progress targets for 2018 that have been set by the states in their SIPs. The reasonable progress goals in the SIPs were set based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. Given the requirement in 40 CFR 51.308(d)(1)(vi) that states must take into account the visibility improvement that is expected to result from the implementation of other Clean Air Act requirements, states set their reasonable progress goals based, in part, on the emission reductions expected to be achieved by CAIR. As CAIR has now been remanded by the D.C. Circuit, the assumptions underlying the development of the reasonable progress targets have changed; however, because the overall EGU emission reductions from the Transport Rule are larger than the EGU emission reductions that would have been achieved by CAIR, we expect the Transport Rule to provide similar or greater benefits than CAIR. In addition, unlike the enforceable emissions limitations and other enforceable measures in the long-term strategy, *see* 64 FR 35733, reasonable progress goals are *not* enforceable measures. Given these considerations, we concluded not to propose disapproval of the reasonable progress goals in any of the regional haze SIPs that relied on CAIR. We noted our intent to act on the remaining elements of the SIP for each state in a separate notice.

B. Public Comments Related to Limited Disapprovals

Several commenters seem to have interpreted our statement that the EPA was not proposing to disapprove the reasonable progress goals set by affected states to mean that the EPA had proposed to determine that these reasonable progress goals meet the requirements of the Regional Haze Rule. The commenters stated that the EPA cannot reasonably conclude that the Transport Rule achieves reasonable progress. As noted in the proposal, we intend to evaluate the reasonable progress goals for each state when taking action on the remaining elements of their regional haze SIPs. As explained above, we do not consider the remand of CAIR to provide a basis for disapproving the reasonable progress goals set by the states. That determination, however, does not indicate that we intend to approve the targets set by the states without any further consideration. In addition, while we have concluded that the Transport Rule achieves greater reasonable progress than BART, we have not determined, as the commenters suggest, that the Transport Rule alone achieves reasonable progress towards the natural visibility goal.

C. Final Action on Limited Disapprovals

This action includes a final limited disapproval of the regional haze SIPs submitted by Alabama, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, and Texas. We are not finalizing the limited disapproval for Florida at this time because the state has requested additional time to modify its SIP to address the change in applicability of the Transport Rule to Florida in the final rule published on August 8, 2011, (76 FR 48208) and is actively preparing SIP revisions.[20] The EPA included Florida in the proposed Transport Rule for coverage under both the SO_2 and NO_X trading programs, but removed Florida from the SO_2 trading program in the final Transport Rule. Florida was unaware of this modification until publication of the final rule. The EPA has decided to postpone action on Florida's regional haze SIP given this extenuating circumstance, Florida's request for additional time to modify its SIP to address the change in coverage under the Transport Rule, and Florida's continued progress toward submitting a SIP revision.

[20] On May 15, 2012, the EPA proposed limited approval of three revisions to the Florida SIP, including BART determinations for five facilities.

VI. FIPs

A. What did the EPA propose?

We proposed FIPs to replace reliance on CAIR requirements with reliance on the trading programs of the Transport Rule as an alternative to BART for SO_2 and NO_X emissions from EGUs in the following states' regional haze SIPs: Alabama, Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia. We proposed FIPs to replace reliance on CAIR requirements with reliance on the Transport Rule as an alternative to BART for NO_X emissions from EGUs in the following states' regional haze SIPs: Florida, Louisiana, and Mississippi.

We proposed that these limited FIPs would satisfy the BART requirement and be a part of satisfying the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. The FIPs would apply only to EGUs in the affected states and only to pollutants covered by the Transport Rule program in those states. The proposed FIPs would not alter states' reasonable progress goals or replace these goals.

B. Public Comments on Proposed FIPs

Similar to the comments received regarding our proposed limited disapprovals, numerous commenters argued that the EPA should not finalize FIPs because, according to the commenters, we cannot rely on the Transport Rule because of the current stay of that rule. Other commenters took the position that we should fully approve the regional haze SIPs that relied on CAIR to satisfy certain regional haze requirements and that our proposed FIPs substituting the Transport Rule as an alternative to source-specific BART in regional haze SIPs are unnecessary.

As explained above in section II.B.2, we do not agree that the EPA cannot rely on the Transport Rule because of the temporary stay imposed by the D.C. Circuit. With respect to reliance on CAIR, as explained in section II.A.3, CAIR has been remanded and only remains in place temporarily; consequently, we cannot fully approve those regional haze SIP revisions that have relied on the now-temporary reductions from CAIR. Although CAIR is currently in place, as a result of the December 30, 2011, Order from the U.S. Court of Appeals for the D.C. Circuit staying the Transport Rule, this does not

affect the earlier court ruling remanding CAIR to the EPA. A number of states objected to the EPA's proposed FIP as these states did not receive a finding of failure to timely submit a regional haze SIP. These states requested the allowable time to revise and resubmit their SIP. Other states which also did not receive a finding of failure to timely submit a regional haze SIP did not object to the EPA's proposed FIP. As explained in section VI.C, we have responded to this comment by granting additional time to those states that prefer to revise and resubmit their SIP to the EPA for approval and did not receive a finding of failure to timely submit their regional haze SIP.

C. Final Action on FIPs

In this action, the EPA is finalizing FIPs to replace reliance on CAIR with reliance on the Transport Rule as an alternative to BART in regional haze SIPs of Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. Regional haze SIPs were due in December 2007. Under the CAA, the EPA is required to promulgate a FIP within 2 years after finding that a state has failed to make a required submission or after disapproving a SIP in whole or in part, unless the state first adopts and we have fully approved a SIP. CAA section 110(c)(1). We made a finding on January 15, 2009, that Georgia, Indiana, Michigan, Ohio, Pennsylvania, Texas, and Virginia had failed to timely submit a regional haze SIP. We are finalizing the FIPs for Iowa, Missouri, South Carolina, Tennessee, and West Virginia, even though we are not required by the CAA to do so at this time, because of our understanding based on communications with state officials that this action on our part is their preference. Our adoption of these FIPs at this time avoids the near-term need for additional administrative steps on the part of these states. That is, these states do not have to take any further action on their regional haze SIPs until SIP revisions are due in 2018. However, at any time, states may, and are encouraged to submit a revision to their regional haze SIP incorporating the requirements of the Transport Rule. At that time, we will withdraw the FIP being finalized in this action.

We are not finalizing FIPs, as proposed, for Alabama, Florida, Louisiana, Mississippi, or North Carolina. Rather than a FIP, Alabama, Louisiana, Mississippi, and North Carolina have requested additional time to correct the deficiencies in their SIPs and submit a SIP revision. As these states did not receive a finding of failure to submit a regional haze SIP, the EPA is not required to promulgate a FIP at this time. The EPA will be required to issue a FIP for each state that does not submit an approvable SIP revision that corrects the deficiencies related to reliance on CAIR in time for the EPA to review and approve it within 2 years of this final limited disapproval action. We are not finalizing a FIP, as proposed, for Texas in order to allow more time for the EPA to assess the current Texas SIP submittal. Additional time is required due to the variety and number of BART-eligible sources and the complexity of the SIP. The EPA is also deferring action on the proposed FIP for Florida for the reasons discussed in section V.C.

VII. Regulatory Text

A. What did the EPA propose?

Based on our finding that the ''Transport Rule + BART elsewhere'' control scenario passes the two-pronged test, we proposed to determine that the Transport Rule trading program will provide greater progress towards Regional Haze goals than source-specific BART. We noted that the proposed determination would apply only to EGUs in the Transport Rule trading programs and only for the pollutants covered by the programs in each state. Accordingly, we proposed to revise 40 CFR 51.308(e)(4) by essentially replacing the name of CAIR with the name of the Transport Rule.

We also proposed that a state that chooses to meet the emission reduction requirements of the Transport Rule by submitting a complete SIP revision substantively identical to the provisions of the EPA trading program that is approved as meeting the requirements of § 52.38 and/or § 52.39 also need not require BART-eligible EGUs in the state to install, operate, and maintain BART for the pollutants covered by such a trading program in the state.

B. Clarification of Final Regulatory Text

A number of the states for which we proposed a FIP had previously failed to either submit a visibility SIP or had failed to submit a SIP that could be fully approved under the visibility regulations issued in 1980. *See* 45 FR 80084 (December 2, 1980). The final regulatory text takes account of this and is not intended to change the findings that have been made in the past with respect to the relevant states' compliance with the requirements of visibility regulations found at 40 CFR 51.302–51.307.

The regulatory text also accounts for final limited approval of the regional haze SIPs of Indiana, Ohio and Virginia that the EPA is finalizing separately, on or about the same day as this action. Including regulatory text that accounts for the final limited approval in this action avoids the need for additional overlapping revisions to the CFR for these states. To ensure that the relevant regulatory text is appropriately revised, we are amending certain regulatory provisions for these states in this action only.[21]

We are also making conforming changes to the regulatory text for the regional haze SIPs of Kentucky, Tennessee and West Virginia as the EPA has previously promulgated a final limited approval and final limited disapproval of these SIPs. For Kentucky, in this action we are making conforming changes to the regulatory text in 40 CFR 52.936(a) regarding the limited approval and limited disapproval of Kentucky's SIP. These conforming changes do not affect the substance of the EPA's final action on Kentucky on March 30, 2012 (77 FR 19098). For Tennessee, in this action we are making conforming changes to the regulatory text in 40 CFR 52.2234(a) regarding the limited approval and limited disapproval of Tennessee's SIP. These conforming changes do not affect the substance of EPA's final action on April 24, 2012 (77 FR 24392). For West Virginia, in this action we are making conforming changes to the regulatory text in 40 CFR 52.2533(d) regarding the limited approval and limited disapproval of West Virginia's SIP. These conforming changes do not affect the substance of the EPA's final action on West Virginia on March 23, 2012 (77 FR 16937).

VIII. 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 some may view it as raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. 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

[21] The regulatory text at issue addressing limited approvals and limited disapprovals can be found at 40 CFR 52.791(a), 40 CFR 52.1886(a) and 40 CFR 52.2452(d).

documented in the docket for this action.

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined by the U.S. Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule would allow states to avoid regulating EGUs in new ways based on the current requirements of the Transport Rule and as such does not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates 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. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 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. This action merely interprets the statutory requirements that apply to states in preparing their SIPs.

E. Executive Order 13132: Federalism

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 action does not impose any new mandates on state or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comments on the proposed rule from state and local officials. We received comments from seven states. These comments are addressed in the final action and in the Response to Comment document.

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

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule does not have a substantial direct effect on one or more Indian tribes, since there are no BART-eligible EGU sources on tribal lands in the Transport Rule region. In addition, the CAA does not provide for the inclusion of any tribal areas as mandatory Class I federal areas; thus, tribal areas are not subject to the requirements of the Regional Haze Rule. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicited additional comment on the proposed action from tribal officials and we received none.

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 to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations 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. This action does not establish requirements that directly affect the general public and private sectors. Rather, this rule will allow states to avoid regulating EGUs in new ways based on the current requirements of the Transport Rule, and thus may avoid adverse effects that conceivably might result from such additional regulation of EGUs by states.

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, section 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. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action 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 12898 (EO) (59 FR 7629, February 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 concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this final rule. The $PM_{2.5}$ air quality improvements that might be expected under implementation of source-specific BART may differ from the Transport Rule in terms of the emission reductions required at any given source. However, our analysis of the Transport Rule suggests that the regional Transport Rule approach provides widespread health benefits especially among populations most vulnerable to $PM_{2.5}$ impacts. This analysis is presented in detail in the Regulatory Impact Analysis for the Transport Rule which is available in the Transport Rule docket EPA–HQ–OAR–2009–0491 and from the main EPA Web page for the Transport Rule available at *www.epa.gov/airtransport.*

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 August 6, 2012.

IX. Statutory Authority

Statutory authority for this rule comes from sections 169A and 169B of the CAA (42 U.S.C. 7491 and 7492). These sections require the EPA to issue regulations that will require states to revise their SIPs to ensure that reasonable progress is made toward the national visibility goals specified in section 169A.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 52

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 30, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.308 is amended by revising paragraph (e)(4) to read as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(e) * * *

(4) A State subject to a trading program established in accordance with § 52.38 or § 52.39 under a Transport Rule Federal Implementation Plan need not require BART-eligible fossil fuel-fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State that chooses to meet the emission reduction requirements of the Transport Rule by submitting a SIP revision that establishes a trading program and is approved as meeting the requirements of § 52.38 or § 52.39 also need not require BART-eligible fossil fuel-fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State may adopt provisions, consistent with the requirements applicable to the State for a trading program established in accordance with § 52.38 or § 52.39 under the Transport Rule Federal Implementation Plan or established under a SIP revision that is approved as meeting the requirements of § 52.38 or § 52.39, for a geographic enhancement to the program to address the requirement under § 51.302(c) related to BART for reasonably attributable impairment from the pollutant covered by such trading program in that State.

* * * * *

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 4. Section 52.61 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 52.61 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.306 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Alabama on July 15, 2008, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

Subpart L—Georgia

■ 5. Section 52.580 is added to read as follows:

§ 52.580 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Georgia on February 11, 2010, and supplemented on November 19, 2010, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(b) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Georgia on February 11, 2010, and supplemented on November 19, 2010, are satisfied by § 52.584.

(c) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2

identified in EPA's limited disapproval of the regional haze plan submitted by Georgia on February 11, 2010, and supplemented on November 19, 2010, are satisfied by § 52.585.

Subpart P—Indiana

■ 6. Section 52.791 is added to read as follows:

§ 52.791 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Indiana on January 14, 2011, and supplemented on March 10, 2011, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(b) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Indiana on January 14, 2011, and supplemented on March 10, 2011, are satisfied by § 52.789.

(c) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 dentified in EPA's limited disapproval of the regional haze plan submitted by Indiana on January 14, 2011 and supplemented on March 10, 2011 are satisfied by § 52.790.

Subpart Q—Iowa

■ 7. Section 52.842 is added to read as follows:

§ 52.842 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Iowa on March 25, 2008, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(b) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Iowa on March 25, 2008, are satisfied by § 52.840.

(c) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Iowa on March 25, 2008, are satisfied by § 52.841.

Subpart S—Kentucky

■ 8. Section 52.936 is revised to read as follows:

§ 52.936 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Kentucky on June 25, 2008, and amended on May 28, 2010, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(b) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Kentucky on June 25, 2008, and amended on May 28, 2010, are satisfied by § 52.940.

(c) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Kentucky on June 25, 2008, and amended on May 28, 2010, are satisfied by § 52.941.

Subpart T—Louisiana

■ 9. Section 52.985 is added to read as follows:

§ 52.985 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Louisiana on June 13, 2008, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(b) [Reserved]

Subpart X—Michigan

■ 10. Section 52.1183 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 52.1183 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302, 51.305, and 51.307 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Michigan on November 5, 2010, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(e) *Measures Addressing Limited Disapproval Associated With NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Michigan on November 5, 2010, are satisfied by § 52.1186.

(f) *Measures Addressing Limited Disapproval Associated With SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Michigan on November 5, 2010, are satisfied by § 52.1187.

Subpart Z—Mississippi

■ 11. Section 52.1279 is added to read as follows:

§ 52.1279 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Mississippi on September 22, 2008, and supplemented on May 9, 2011, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(b) [Reserved]

Subpart AA—Missouri

■ 12. Section 52.1339 is amended by revising paragraph (a) and adding new paragraphs (c), (d), and (e) to read as follows:

§ 52.1339 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR

51.306 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Missouri on August 5, 2009, and supplemented on January 30, 2012, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(d) *Measures Addressing Limited Disapproval Associated With NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Missouri on August 5, 2009, and supplemented on January 30, 2012, are satisfied by § 52.1326.

(e) *Measures Addressing Limited Disapproval Associated With SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Missouri on August 5, 2009, and supplemented on January 30, 2012, are satisfied by § 52.1327.

Subpart II—North Carolina

■ 13. Section 52.1776 is added to read as follows:

§ 52.1177 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by North Carolina on December 17, 2007, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(b) [Reserved]

Subpart KK—Ohio

■ 14. Section 52.1886 is added to read as follows:

§ 52.1886 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Ohio on March 11, 2011, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(b) *Measures Addressing Limited Disapproval Associated With NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Ohio on March 11, 2011, are satisfied § 52.1882.

(c) *Measures Addressing Limited Disapproval Associated With SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Ohio on March 11, 2011, are satisfied by § 52.1883.

Subpart NN—Pennsylvania

■ 15. Section 52.2042 is added to read as follows:

§ 52.2042 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Pennsylvania on December 20, 2010, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(b) *Measures Addressing Limited Disapproval Associated With NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Pennsylvania on December 20, 2010, are satisfied § 52.2040.

(c) *Measures Addressing Limited Disapproval Associated With SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Pennsylvania on December 20, 2010, are satisfied by § 52.2041.

Subpart PP—South Carolina

■ 16. Section 52.2132 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 52.2132 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305 and 51.306 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by South Carolina on December 17, 2007, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

(e) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by South Carolina on December 17, 2007, are satisfied by § 52.2140.

(f) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by South Carolina on December 17, 2007, are satisfied by § 52.2141.

Subpart RR—Tennessee

■ 17. Section 52.2234 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 52.2234 Visibility protection.

(a) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Tennessee on April 4, 2008, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

* * * * *

(c) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Tennessee on April 4, 2008, are satisfied by § 52.2240.

(d) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Tennessee on April 4, 2008, are satisfied by § 52.2241.

Subpart SS—Texas

■ 18. Section 52.2304 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 52.2304 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include fully approvable measures for meeting the requirements of 40 CFR 51.305 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Texas on March 31, 2009, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited disapproval to the plan provisions addressing these requirements.

Subpart VV—Virginia

■ 19. Section 52.2452 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 52.2452 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305 and 51.306 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by Virginia on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(e) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Virginia on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011, are satisfied by § 52.2440.

(f) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Virginia on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011, are satisfied by § 52.2441.

Subpart XX—West Virginia

■ 20. Section 52.2533 is amended by revising paragraphs (a) and (d) and adding new paragraphs (e) and (f) to read as follows:

§ 52.2533 Visibility protection.

(a) *Reasonably Attributable Visibility Impairment.* The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305, 51.306, and 51.307 for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Regional Haze.* The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by West Virginia on June 18, 2008, does not include fully approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO_X and SO_2 from electric generating units. EPA has given limited approval and limited disapproval to the plan provisions addressing these requirements.

(e) *Measures Addressing Limited Disapproval Associated with NO_X.* The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by West Virginia on June 18, 2008, are satisfied by § 52.2540.

(f) *Measures Addressing Limited Disapproval Associated with SO_2.* The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by West Virginia on June 18, 2008, are satisfied by § 52.2541.

[FR Doc. 2012–13693 Filed 6–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0394; FRL–9663–1]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Consumer Products and AIM Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the addition of a new rule to the Illinois State Implementation Plan (SIP) submitted by the Illinois Environmental Protection Agency (IEPA) on April 7, 2010. The rule being approved into the SIP is Title 35 Illinois Administrative Code (IAC) Part 223, ''Standards and Limitations for Organic Material Emissions for Area Sources.'' The rule is approvable because it is at least as stringent, and in some cases more stringent than, EPA's national consumer products and architectural and industrial maintenance (AIM) coatings rules. However, EPA is conditionally approving four specific paragraphs in the rule, based on a September 2, 2011, letter from IEPA committing to correct the noted deficiencies in these paragraphs within one year of July 9, 2012.

DATES: This final rule is effective on July 9, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2010–0394. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

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

I. Background
II. Did EPA receive any comments on our proposed rulemaking?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

On April 7, 2010, IEPA submitted a request for EPA to approve 35 IAC Part 223, titled, ''Standards and Limitations for Organic Material Emissions for Area Sources,'' into the Illinois SIP. This Part includes measures to limit volatile organic compounds (VOC) emissions by requiring reductions in the VOC content of consumer products and AIM coatings. Consumer products are a wide array of sprays, gels, cleaners, adhesives, and other chemically formulated products that are purchased for personal or institutional use and that emit VOC through their consumption, storage, disposal, destruction, or decomposition. AIM coatings are paints, varnishes, and other similar coatings that are meant for use on external surfaces of buildings or other outside structures and that emit VOC through similar means to consumer products. See EPA's October 27, 2011, proposed approval at 76 FR 66663 for discussion of the provisions in this rule.

The VOC limits for consumer products and AIM coatings in 35 IAC Part 223 are based on existing California Air Resources Board (CARB) regulations and model rules developed by the Ozone Transport Commission (OTC) for consumer products and AIM coatings. The VOC limits that Illinois adopted for consumer products are at least as stringent, and in some cases more stringent than EPA's national consumer products rule, ''National Volatile Organic Compound Emission Limits for Consumer Products,'' 40 CFR part 59, Subpart C. The VOC limits that Illinois adopted for AIM coatings are at least as stringent, and in some cases more stringent than EPA's national AIM rule, ''National Volatile Organic Compound Emission Standards for Architectural Coatings,'' 40 CFR part 59, Subpart D. Because the consumer products and AIM limits Illinois adopted are at least as stringent, and in some cases are more stringent than EPA's VOC limits for these product categories, the new Part 223 is approvable into the Illinois SIP. It should be noted that, while Illinois is not an OTC member state, they have voluntarily chosen to adopt these VOC limits to create more consistency in regional and national markets for consumer products and AIM coatings.

During our rule-by-rule review of Illinois' submittal, we identified four paragraphs within 35 IAC Part 223 that contained errors. Under section 110(k)(4) of the Clean Air Act (CAA), EPA may conditionally approve a portion of a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. We notified IEPA about these errors, and on September 2, 2011, Illinois sent EPA a letter committing to amend these paragraphs to display the correct limits and limit categories and submit the revised paragraphs to EPA within one year of our final approval. The four provisions containing errors are 35 IAC 223.205(6)(A), 35 IAC 223.205(6)(B), 35 IAC 223.205(17)(A), and 35 IAC 223.205(17)(B). The errors involved incorrect high volatility organic material and medium volatility organic material limits.

On October 27, 2011, we proposed to approve 35 IAC Part 223 into the Illinois SIP (76 FR 66663). We also proposed to conditionally approve the four erroneously labeled paragraphs within the State's submittal of 35 IAC Part 223 based on the September 2, 2011, commitment from Illinois to amend these paragraphs to display the correct limits and limit categories and submit the revised paragraphs to EPA within one year of our final approval.

II. Did EPA receive any comments on our proposed rulemaking?

EPA did not receive any comments on our proposed rulemaking. Therefore, EPA is making its approval final.

III. What action is EPA taking?

EPA is approving into the Illinois SIP 35 IAC Part 223, ''Standards and Limitations for Organic Material Emissions for Area Sources,'' except that EPA is conditionally approving paragraphs (6)(A), (6)(B), (17)(A), and (17)(B) of 35 IAC Part 223.205. This conditional approval is based on a commitment from the State sent on September 2, 2011, to correct these paragraphs within one year of July 9, 2012. If this condition is not fulfilled within one year of the effective date of final rulemaking, the conditional approval will automatically revert to disapproval, as of the deadline for meeting the conditions, without further action from EPA. EPA will subsequently publish a notice in the **Federal Register** informing the public of a disapproval. If Illinois submits final and effective rule revisions correcting the deficiencies within one year from the effective date of this conditional approval, EPA will publish a subsequent notice in the **Federal Register** to acknowledge conversion of the conditional approval to a full approval.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.719 is added to read as follows:

§ 52.719 Identification of plan—Conditional approval.

On April 7, 2010, Illinois submitted an amendment to its State Implementation Plan to add a new rule that limits the amount of volatile organic compounds (VOCs) from consumer products and architectural and industrial maintenance coatings at Part 223 of Title 35 of the Illinois Administrative Code (35 IAC 223). Paragraphs (a)(6) and (a)(17), of 35 IAC 223.205 contain errors in the VOC limits listed for aerosol- and non aerosol-based antiperspirants and deodorants. 35 IAC 233.205(a)(6)(A) erroneously provides two high-volatility VOC limits for aerosol-based antiperspirants when there should be both a high- and medium-volatility limit for this category. 35 IAC 233.205(a)(6)(B) erroneously provides two medium-volatility VOC limits for non aerosol-based antiperspirants when there should be both a high- and medium-volatility limit for this category. 35 IAC 233.205(a)(17)(A) erroneously provides two high-volatility VOC limits for aerosol-based deodorants when there should be both a high- and medium-volatility limit for this category. 35 IAC 233.205(a)(17)(B) erroneously provides two medium-volatility VOC limits for non aerosol-based deodorants when there should be both a high- and medium-volatility limit for this category. The paragraphs are conditionally approved contingent on Illinois submitting to EPA revised provisions correcting these errors by July 8, 2013.

(i) *Incorporation by reference.* Illinois Administrative Code; Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter c: Emission Standards and Limitation for Stationary Sources; Part 223: Standards and Limitations for Organic material Emissions for Area Sources; Section 205: Standards; paragraphs (a)(6) and (a)(17), effective on June 8, 2009.

(ii) [Reserved]

■ 3. Section 52.720 is amended by adding paragraph (c)(191) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(191) On April 7, 2010, Illinois submitted an amendment to its State Implementation Plan to add a new rule at 35 Illinois Administrative Code Part 223 that limits the amount of volatile organic compounds from consumer products and architectural and industrial maintenance coatings.

(i) *Incorporation by reference.* (A) Illinois Administrative Code; Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter c: Emission Standards and Limitation for Stationary Sources; Part 223: Standards and Limitations for Organic material Emissions for Area Sources, except for 223.205(a)(6) and (a)(17), effective June 8, 2009.

(B) [Reserved]

[FR Doc. 2012–13447 Filed 6–6–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 12–7]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of six months, the information collection associated with the Commission's *Review of the Emergency Alert System,* Fifth Report and Order (*Order*). This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of amendments adopted therein that were subject to OMB approval.

DATES: The amendments to 47 CFR 11.21(a), 11.33(a)(4), 11.41(b), 11.42, 11.54(b)(13), and 11.55 published at 77 FR 16688, March 22, 2012, are effective June 7, 2012.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–2351, or email: *gregory.cooke@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on May 16, 2012, OMB approved, for a period of six months, the information collection requirements contained in the Commission's *Order,* FCC 11–92, published at 77 FR 16688, March 22, 2012. The OMB Control Number is 3060–1169. The Commission sought emergency OMB approval and will now conduct all the regular OMB processes to obtain the full three-year clearance from them. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Judith B. Herman, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1169, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to

fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received emergency OMB approval on May 16, 2012, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 11. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1169.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1169.

OMB Approval Date: May 16, 2012.

OMB Expiration Date: November 30, 2012.

Title: Part 11—Emergency Alert System, Fifth Report and Order, FCC 12–7.

Form Number: N/A.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 20 hours.

Frequency of Response: On-occasion reporting requirements and recordkeeping requirements.

Obligation to Respond: Voluntary. The statutory authority for this information collection is found at sections 1, 2, 4(i), 201–205, and 226(h)(1)(A) of the Communications Act of 1934, as amended (Act), 47 U.S.C. 151, 152, 154(i), 201–205, and 226(h)(1)(A).

Total Annual Burden: 400 hours.

Total Annual Cost: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Part 11 contains rules and regulations providing for an emergency alert system (EAS). The EAS provides the President with the capabililty to provide immediate communications and information to the general public during periods of national emergency. The EAS also provides state and local governments and the National Weather Service with the capability to provide immediate communcations and information to the general public concerning emergency situations posing a threat to life and property. In the *Order,* the Federal Communications Commission (Commission) adopts amendments to its Part 11 rules governing the EAS to more fully codify the existing obligation to process alert messages formatted in the Common Alerting Protocol and to streamline, and to streamline and clarify these rules eliminate superfluous and stale requirements and generally enhance their effectiveness. Some of these amendments modify or clarify existing information collection requirements. Accordingly, the Commission sought and obtained authorization to modify such various information collection requirements that already existed in the Part 11 rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–13789 Filed 6–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–118]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the interim regulations of the Commission's rules, which were published in the **Federal Register** on Monday, August 5, 2011. The interim regulations require Internet-based Telecommunications Relay Service (iTRS) providers certify, under penalty of perjury, that their certification applications and annual compliance filings are truthful, accurate, and complete.

DATES: Effective June 7, 2012.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559–5158 (voice/videophone), or email *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION:

The Federal Communications Commission published a document amending 47 CFR 64.606 in the **Federal Register** of August 5, 2011, (76 FR 47476). The amended rules are necessary to help ensure that the Commission has true and complete information, thereby ensuring that only qualified providers are eligible for compensation from the Interstate TRS Fund (Fund).

Need for Correction

As published, the interim regulations inadvertently omitted regulatory text which may prove to be misleading and needs to be corrected accordingly.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendments:

PART 64—-MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

■ 2. Amend § 64.606 by adding paragraph (a)(2)(v) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) * * *

(2) * * *

(v) The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section, must certify as follows: I swear under penalty of perjury that I am _____(name and title), _____an officer of the above-named applicant, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

* * * * *

[FR Doc. 2012–13791 Filed 6–6–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 110
Thursday, June 7, 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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1200, 1201, 1203, 1208, and 1209

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board), following an internal review of MSPB regulations and after consideration of comments received from MSPB stakeholders, is proposing to amend its rules of practice and procedure in order to improve and update the MSPB's adjudicatory processes.

DATES: Submit written comments on or before July 23, 2012.

ADDRESSES: Submit your comments concerning this proposed rule by one of the following methods and in accordance with the relevant instructions:

Email: mspb@mspb.gov. Comments submitted by email can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML and PDF. If possible, commenters are asked to use a text format and not an image format for attachments. An email should contain a subject line indicating that the submission contains comments to the MSPB's proposed rule. The MSPB asks that parties use email to submit comments if possible. Submission of comments by email will assist MSPB to process comments and speed publication of a final rule;

Fax: (202) 653–7130. Faxes should be addressed to William D. Spencer and contain a subject line indicating that the submission contains comments concerning the MSPB's proposed rule;

Mail or other commercial delivery: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419;

Hand delivery or courier: Should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: As noted above, MSPB requests that commenters use email to submit comments, if possible. All comments received will be included in the public docket without change and will be made available online at *www.mspb.gov/regulatoryreview/index.htm,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information whose disclosure is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenters identity, include a statement that the comment is being submitted anonymously, and include no personally-identifiable information. The email address of a commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body a comment.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; (202) 653–7200, fax: (202) 653–7130 or email: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is the product of a comprehensive internal review of MSPB's adjudicatory regulations, the first such review since the establishment of MSPB in 1979. This review began in January 2011 when the Board solicited suggestions for revisions to MSPB's adjudicatory regulations from MSPB staff. Subsequently, an internal working group was created to review the proposals submitted by MSPB staff, identify meritorious proposals, and develop draft amendments to MSPB's regulations. During the working group's deliberations, MSPB also received two requests for rulemaking from interested parties, and those requests were considered during the internal review process.

The recommendations prepared by the internal working group were preliminarily evaluated by the Board Members. The internal working group then sought input from over 30 stakeholder agencies, organizations, and individuals in accordance with the public participation requirement in Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The stakeholders were invited to provide comments concerning the preliminary recommendations of the working group. The stakeholders were also asked to propose needed changes to any of MSPB's adjudicatory regulations not identified by the internal review. Comments were received from 15 stakeholders, and those entities were offered an opportunity to present any additional comments at a meeting with representatives of MSPB's internal working group. That meeting was held on March 6, 2012, at MSPB's headquarters, and the 6 stakeholders who responded to the invitation were each allocated 10 minutes to speak. Although members of MSPB's internal working group attended the meeting to hear the presentations by the stakeholders, the Board Members did not attend. Following the stakeholder presentations, MSPB's internal working group reconvened to draft a proposed rule for consideration by the Board Members.

The proposed rule published today is therefore the result of the most comprehensive review of MSPB's adjudicatory procedures ever undertaken. In order to ensure transparency and to assist the parties who wish to comment, MSPB's communications with stakeholders, responses received from the stakeholders, and a transcript of the stakeholders' March 6, 2012 oral presentations are available for review by the public at *www.mspb.gov/regulatoryreview/index.htm.*

Scope of Comments Requested

The MSPB asks commenters to provide their views on the regulations proposed by MSPB. The MSPB also invites additional comments on any other aspect of MSPB's adjudicatory regulations that commenters believe should be amended.

Summary of Changes

Set forth below is a summary of the amendments proposed by the MSPB.

Section 1200.4 Petition for Rulemaking

This proposed amendment authorizing petitions requesting the MSPB to amend its regulations is 5 U.S.C. 7121specifically authorized by 5 U.S.C. 553(e), which states that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' At present, the MSPB has no procedures in place for responding to these requests. This proposed amendment will ensure that parties wishing to petition the Board for regulatory changes are aware of their right to make such a request and the MSPB's procedures for filing and responding to such requests.

Section 1201.3 Appellate Jurisdiction

The MSPB proposes to amend the opening paragraph to explain that this regulation is not a source of MSPB jurisdiction and that the cited laws and regulations need to be consulted to determine the MSPB's jurisdiction. The proposed amendment emphasizes that jurisdiction depends on the nature of the employment or position held as well as the nature of the action taken. The proposed regulation also revises the listing of appealable actions within the MSPB's appellate jurisdiction to achieve several ends: (1) To make the regulations easier to understand (plain English where possible); (2) to give each category of appealable action a descriptive label; (3) to list appealable actions in order from most common to least common; and (4) to group like actions together, which resulted in a list of 11 appealable actions instead of the previous 20.

Section 1201.4 General Definitions

The MSPB proposes revising subsection (a) to eliminate the phrase ''attorney-examiner,'' which was believed to be an archaic term, and substitute the language of 5 U.S.C. 7701(b)(1).

The MSPB is proposing to revise subsection (j) out of a concern that the definition of ''date of service'' is both circular (''the date on which documents are served'') and unclear, since ''service'' is defined as the ''process of furnishing a copy of any pleading'' to the MSPB and other parties. It is thus not clear if the date of service refers to when a pleading is sent out, e.g., the postmark date, or when the pleading is received. Parties have interpreted ''date of service'' both ways. The revised regulation resolves this ambiguity by providing that ''date of service'' refers to when a document is sent out, not when it is received.

The MSPB further determined that it was inequitable to allow the amount of time that a party has to file a pleading depend on the method of service used by the opposing party. To redress such inequity the proposed regulation also states that ''whenever a regulation in this part bases a party's deadline for filing a pleading on the date of service of some previous document, and the previous document was served on the party by mail, the filing deadline will be extended by 5 calendar days.'' This incorporates the presumption of 5 CFR 1201.4(k) that mailed documents are received 5 days after the postmark date.

Section 1201.14 Electronic Filing Procedures

The MSPB proposes adding new subsections (4) and (5) to section (c) to reflect current policy and procedure regarding Sensitive Security Information (SSI) and classified information. The MSPB has determined that it is inappropriate to use the e-Appeal Online system for SSI or classified information. The proposed revision to section (m) makes the regulation consistent with the intent expressed by the Board when it originally published this provision at 73 FR 10127, 10128 (2008). Finally, an additional subsection is being proposed to 5 CFR 1201.14 to provide that amici are not permitted to e-file. The MSPB considered the option of reconfiguring e-Appeal Online to address Privacy Act concerns and allow amici to file using e-Appeal Online but determined that the cost of such a change was not justified considering how rarely the Board receives amicus briefs.

Section 1201.21 Notice of Appeal Rights

As discussed more fully below, in connection with jurisdiction over Individual Right of Action (IRA) appeals under Part 1209, the Board is proposing to change longstanding jurisprudence concerning allegations of reprisal for whistleblowing under 5 U.S.C. 2302(b)(8) where an employee has been subjected to an otherwise appealable action. Under the provisions of 5 U.S.C. 7121(g)(3), such an employee ''may elect not more than one'' of 3 remedies: (A) An appeal to the Board under 5 U.S.C. 7701; (B) a negotiated grievance under 5 U.S.C. 7121(d); or (C) corrective action under subchapters II and III of 5 U.S.C. chapter 12, i.e., a complaint filed with OSC (5 U.S.C. 1214), which can be followed by an IRA appeal filed with the Board (5 U.S.C. 1221). Under subsection (g)(4), an election is deemed to have been made based on which of the 3 actions the individual files first.

A plain reading of § 7121(g) would appear to indicate that, contrary to longstanding Board precedent, an individual who has been subjected to an otherwise appealable action, but who seeks corrective action from the Office of Special Counsel (OSC) before filing an appeal with the Board, has elected an IRA appeal, and is limited to the rights associated with such an appeal, i.e., the only issue before the Board is whether the agency took one or more covered personnel actions against the appellant in retaliation for making protected whistleblowing disclosures; the agency need not prove the elements of its case, and the appellant may not raise other affirmative defenses. As discussed in 5 CFR 1209.2 below, the proposed regulation would overrule the Board's longstanding precedent in this area.

The proposed regulation would require agencies to fully notify employees of their rights in these situations so that they can make an informed choice among the available 3 options. Paragraph (e) was added to require notice in mixed cases.

Section 1201.22 Filing an Appeal and Responses to Appeals

The MSPB proposes to revise this regulation to include a new section stating the MSPB's general rule about constructive receipt. This provision also includes several illustrative examples.

Section 1201.23 Computation of Time

The MSPB proposes to amend the first sentence of this regulation so that it will apply to all situations in which a deadline for action is set forth in the MSPB's regulations or by a judge's order, including discovery requests and responses between the parties.

Section 1201.24 Content of an Appeal; Right to Hearing

The proposed revision radically reduces the scope of requested attachments from ''any relevant documents'' to a request for the proposal notice as well as the decision notice, and for the SF–50 if available. It also cautions appellants not to delay filing and miss a deadline if they lack any of these documents.

In the MSPB's experience these documents, in conjunction with the items of information mandated in 5 CFR 1201.24(a)(1)–(9), are all that is necessary in order to docket a new appeal and issue appropriate acknowledgment and jurisdictional orders. Under the current regulation, appellants frequently file numerous attachments, many of which will be included as part of the agency file, and

other documents that are not relevant to the disposition of the appeal.

The proposed regulation does not mandate the attachment of documents that would demonstrate that the appellant has satisfied the jurisdictional requirement of exhausting an administrative procedure in IRA and Veterans Employment Opportunity Act (VEOA) appeals. Obtaining such documents is best left to acknowledgment and jurisdictional orders issued after an appeal is filed. The current MSPB Appeal Form requests the attachment of numerous documents. If the proposed revision is adopted, the MSPB will revise the Appeal Form so that it is consistent with the regulation.

The definition of ''right to hearing'' in paragraph (d) is amended to explain that ''in an appeal under 5 U.S.C. 7701, an appellant generally has a right to a hearing on the merits if the appeal has been timely filed and the Board has jurisdiction over the appeal.''

Section 1201.28 Case Suspension Procedures

The MSPB proposes to overhaul its case suspension procedures. Unlike the current regulation, the draft regulation does not include separate subsections for unilateral requests and joint requests. The amended regulation allows for more than a single 30-day suspension period and eliminates the current restrictions on when a request must be filed.

Section 1201.29 Dismissal With Prejudice

This proposed regulation codifies existing case law concerning dismissals without prejudice. *See, e.g., Wheeler* v. *Department of Defense,* 113 M.S.P.R. 519, ¶ 7 (2010); *Milner* v. *Department of Justice,* 87 M.S.P.R. 660, ¶ 13 (2001). The regulation also recognizes the necessity to give administrative judges discretion to grant dismissals without prejudice and does not include a requirement that cases that have been dismissed without prejudice should automatically be reinstated because many cases are not reinstated at all following a dismissal without prejudice. The regulation sets forth a rule requiring the judge to fix a date certain by which the appeal must be refiled. In a case where the setting of such a date is impractical, the rule includes a reference to a judge's authority under 5 CFR 1201.12 to waive the regulation when appropriate.

Section 1201.31 Representatives

The ''or after 15 days'' clause is proposed to be added at the end of the third sentence in 5 CFR 1201.31(b) to acknowledge that a representative's conflict of interest may not be readily apparent. The MSPB also proposes to move the provisions in 5 CFR 1201.31(d) governing exclusion and other sanctions for contumacious behavior by parties and representatives to 5 CFR 1201.43 (Sanctions). See that section for proposed revisions.

Section 1201.33 Federal Witnesses

The proposed language has been added to clarify that an agency's responsibility under this regulation includes producing witnesses at depositions as well as at hearings.

Section 1201.34 Intervenors and Amicus Curiae

The present regulation defines an amicus curiae as a person/organization that files a brief with ''the judge,'' and that persons/organizations may, in the discretion of ''the judge,'' be granted permission to file a brief. In practice, the Board has recently been receiving motions to file amicus briefs for the first time on petition for review, and the Board has been granting at least some of those requests. The proposed regulation addresses this discrepancy and also provides further explanation as to what an amicus is permitted to do.

In addition, there are presently no criteria in the regulation indicating when requests to file amicus briefs will be granted or denied. The proposed regulation sets forth general guidelines while maintaining the current language that provides that such requests may be granted in the judge's (or Board's) discretion. These general guidelines (legitimate interest, no undue delay, material contribution to proper disposition) are similar to those found in the regulations of some other federal adjudicatory agencies.

Section 1201.36 Consolidating and Joining Appeals

In the second sentence of subsection (a)(2), the MSPB proposes to substitute ''removal'' for ''dismissal.'' Dismissal is not a term used by the Board to describe an employee's separation from employment for disciplinary reasons.

Section 1201.41 Judges

The proposed amendment reflects the language used in the MSPB Strategic Plan.

Section 1201.42 Disqualifying a Judge

The proposed amendment reflects the fact that under current MSPB practice a judge who considers himself or herself disqualified notifies the Regional Director, not the Board.

Section 1201.43 Sanctions

Excluding parties and representatives for contumacious behavior is currently covered by 5 CFR 1201.31 (Representatives). The MSPB believes that this subject is better covered under 5 CFR 1201.43 (Sanctions), as exclusion or other action for contumacious behavior is a sanction. The revised regulation would give explicit authority for suspending or terminating a hearing that has begun. The proposed rule also deletes the requirement of a show-cause order in favor a general requirement that, before imposing a sanction, the judge must provide a prior warning and document the reasons for any sanction. A formal show-cause order is simply not feasible where the misconduct occurs during a hearing. Similarly, the proposed rule also proposes to eliminate the provision for an interlocutory appeal of a sanction for contumacious behavior. The MSPB believes that review of sanctions of this nature via petition for review is sufficient and delaying the entire proceeding to adjudicate the appropriateness of a sanction is not warranted. The proposed rule also amends this regulation to permit a judge to limit participation by a representative without excluding the representative from the case entirely. Finally, the proposed rule deletes the term ''appellant's representative'' and instead substitutes the term ''party's representative.''

Section 1201.51 Scheduling the Hearing

The current extensive list of fixed hearing sites contained in Appendix III of Part 1201 causes administrative inefficiencies and can have adverse budgetary considerations for the MSPB, as the cost of airfares are renegotiated by GSA each fiscal year and cost of court reporters can vary considerably from one city to the next. This proposal gives the MSPB greater flexibility to change approved hearing sites listed on the Board's public Web site instead of changing Appendix III through a **Federal Register** notice.

Section 1201.52 Public Hearings

This proposed amendment would give administrative judges express authority to control the use of electronic devices at a hearing.

Section 1201.53 Record of Proceedings

The MSPB proposes to make several changes to the regulation. In light of changing technology, the term ''tape recording'' has been replaced by the word ''recording'' and because of the existence of e-transcripts and other electronic formats, the term ''written

transcript'' has been replaced by ''transcript.''

More significantly, the MSPB proposes to allow a judge or the Board to order the agency to pay for a transcript in certain circumstances: ''In the absence of a request by a party, and upon determining that a transcript would significantly assist in the preparation of a clear, complete, and timely decision, the judge or the Board may direct the agency to purchase a full or partial transcript from the court reporter, and to provide copies of such a transcript to the appellant and the Board.'' The regulation proposed by the MSPB is more narrowly-tailored than the comparable EEOC regulation that requires federal agencies to ''arrange and pay for verbatim transcripts.'' 29 CFR 1614.109(h).

Under 5 U.S.C. 7701(a) an appellant is entitled to a hearing for which a transcript will be kept. The MSPB has long satisfied this requirement by recording the hearing. *Gonzalez* v. *Defense Logistics Agency,* 772 F.2d 887, 890 (Fed. Cir. 1985). The MSPB is not, however, required to produce a verbatim written transcript of the hearing. *Gearan* v. *Department of Health and Human Services,* 838 F.2d 1190, 1192–93 (Fed. Cir. 1988). Thus, while the MSPB has in the past used appropriated funds to prepare a written hearing transcript when an agency fails to elect to transcribe a recorded hearing, the MSPB is not required to prepare a written transcript. As a result, the MSPB believes that a regulation requiring a Federal agency to prepare a written hearing transcript does not constitute an improper augmentation of the MSPB's appropriations because the Board is not required to prepare such a transcript and Federal agencies receive appropriations to pay for the costs of litigating appeals before the Board.

Section 1201.56 Burden and Degree of Proof; Affirmative Defenses

The Board's current regulation at 1201.56 provides without qualification that jurisdiction must be proved by preponderant evidence. This regulation is in conflict with a significant body of Board case law holding that some jurisdictional elements may be established by making nonfrivolous allegations. The U.S. Court of Appeals for the Federal Circuit has ruled that the Board must abide by its published regulation in section 1201.56. *See Bledsoe* v. *Merit Systems Protection Board,* 659 F.3d 1097, 1101–04 (Fed. Cir. 2011); *Garcia* v. *Department of Homeland Security,* 437 F.3d 1322, 1338–43 (Fed. Cir. 2006) (en banc). In Garcia, the court observed that, because 5 U.S.C. 7701 is silent with respect to the burden of proof for establishing jurisdiction, the Board can make rules regarding this matter by notice-and-comment rulemaking, and that when it does so, its rules are entitled to deference under *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 842 (1984). *Garcia,* 437 F.3d at 1338–39. The court observed that, if the Board is dissatisfied with its current rule at section 1201.56, and desires to change what is required to establish jurisdiction, it may do so by notice-and-comment rulemaking. *Id.* at 1343. The Board is now doing so.

In reviewing our jurisprudence is this area, there appear to be only four types of jurisdictional elements in the cases the Board is authorized to hear: (1) Whether the appellant is a person entitled to bring the sort of appeal authorized by the law, rule, or regulation that gives the Board jurisdiction; (2) whether the agency action or decision being challenged is of a type covered by the law, rule, or regulation that gives the Board jurisdiction; (3) whether the appellant has exhausted a required administrative procedure; and (4) elements that relate to the nature or merits of the appeal or claim over which the Board has been given jurisdiction.

When there is no overlap between jurisdictional issues and merits issues, i.e., when the only jurisdictional issues are of types (1) through (3), we conclude that all jurisdictional elements must be established by preponderant evidence. Adverse action appeals under 5 U.S.C. 7511–7514 provide a good example why this conclusion is warranted. Section 7511 sets out applicable definitions, including who is an ''employee''; section 7512 specifies the personnel actions that are covered; and section 7513 sets forth the two merits issues—whether the action was taken ''for such cause as will promote the efficiency of the service,'' and whether the agency complied with prescribed procedures. The jurisdictional grant to the Board is stated in section 7513(d): ''An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.'' The grant of jurisdiction thus focuses on and is limited to the first two elements identified above: (1) Whether the appellant is a covered ''employee'' as defined in section 7511; and (2) whether the appellant was subjected to one of the personnel actions listed in section 7512. Implicit in this statutory structure is an ''if-then'' condition precedent. If, but only if, the appellant actually is a covered ''employee'' who has been subjected to a covered personnel action, then the appellant is entitled to a Board determination of whether the agency took the action for such cause as will promote the efficiency of the service and whether the agency followed prescribed procedures. Determining whether the appellant actually is a covered employee who has been subjected to one of the listed personnel actions requires proof by a preponderance of the evidence.

When Congress (or the Office of Personnel Management where an OPM regulation is the source of Board jurisdiction) has not clearly differentiated jurisdictional issues from merits issues, i.e., where some matters are both jurisdictional and merits, there is no justification for inferring that a ''dual purpose'' issue is a condition precedent that must be proved by preponderant evidence before the merits of the case are reached. Such a requirement led to the counter-intuitive finding in *Latham* v. *U.S. Postal Service,* 117 M.S.P.R. 400, ¶ 10 n.9 (2012), that, because the issue of whether a denial of restoration was arbitrary and capricious had been held to be a jurisdictional issue as well as a merits issue, an appellant who establishes jurisdiction over a partial recovery restoration claim automatically prevails on the merits of that claim.

Individual right of action (IRA) appeals under 5 U.S.C. 1221 provide another example where the grant of Board jurisdiction does not clearly differentiate between jurisdictional issues and merits issues. Paragraph (a) of this section provides that:

Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board.

Although the first three types of jurisdictional elements are referenced in the grant of jurisdiction—the appellant must be a covered ''employee, former employee, or applicant for employment,'' must have been subjected to a covered ''personnel action'' that was ''taken, or proposed to be taken,'' and must have exhausted his or her administrative remedy with the Special Counsel—so is the merits issue of whether the covered personnel action was taken or proposed to be taken as a result of the prohibited personnel practice described in 5 U.S.C.

2302(b)(8), i.e., whether the personnel action was retaliation for protected whistleblowing. Both the Board and its reviewing court have regarded this latter matter as both jurisdictional and merits in nature. *See Yunus* v. *Department of Veterans Affairs,* 242 F.3d 1367, 1371 (Fed. Cir. 2001); *Rusin* v. *Department of the Treasury,* 92 M.S.P.R. 298, ¶ 12 (2002). For jurisdictional purposes, a nonfrivolous allegation will suffice. On the merits, the appellant must establish by preponderant evidence that he or she made a protected whistleblowing disclosure, and that the disclosure was a contributing factor in the personnel action that was taken or proposed. *E.g. Schnell* v. *Department of the Army,* 114 M.S.P.R. 83, ¶ 18 (2010); *Fisher* v. *Environmental Protection Agency,* 108 M.S.P.R. 296, ¶ 15 (2008).

Section 1201.58 Closing the Record

This proposed amendment is based upon case law indicating that, notwithstanding an order setting the date on which the record will close, a party must be allowed to submit evidence to rebut new evidence submitted by the other party just prior to the close of the record. *See Miller* v. *U.S. Postal Service,* 110 M.S.P.R. 550, ¶ 9 (2009); *Mooney* v. *Department of Defense,* 44 M.S.P.R. 524, 528 (1990); *Naekel* v. *Department of Transportation,* 32 M.S.P.R. 488, 496 (1987).

Section 1201.62 Producing Prior Statements

The MSPB proposes to delete this regulation in its entirety as it has virtually never been invoked or applied and is believed to be unnecessary.

Section 1201.71 Purpose of Discovery

This proposed amendment adds a sentence to the end of this section stating that discovery requests and discovery responses should not ordinarily be filed with the Board. Statements to this effect are currently contained in standard orders.

Section 1201.73 Discovery Procedures

The proposed changes to the regulation address several important matters. The initial disclosure requirement of subsection (a) has been eliminated in its entirety. The Board's initial disclosure provision is based on Fed. R. Civ. P. 26(a)(1). Although such a requirement makes a great deal of sense in article III courts, it makes little sense in the adjudication of MSPB appeals. First and foremost, there is nothing comparable in federal court litigation to the Agency File in an MSPB proceeding. The agency file, required by 5 CFR 1201.25, contains ''[a]ll documents contained in the agency record of the action'' being appealed. In the MSPB's experience, the initial disclosure requirement results in unnecessary and unfruitful motion practice, and distracts both parties from more important matters, such as the preparation of the agency file and responses to orders on timeliness and jurisdiction.

The current regulation includes separate subsections governing discovery from a party and discovery from a nonparty. The proposed amendments eliminate that distinction as unnecessary. There was an intermediate process for unsuccessful attempts at discovery from a nonparty, in which the party seeking discovery would seek an order from the judge directing that the discovery take place. If that was insufficient, a subpoena could be sought and issued.

Under the proposed regulation, the requirements are essentially the same for parties and nonparties. The discovery request is served on the party or nonparty and/or their representative. If a discovery response is not forthcoming or is inadequate, attempts must be made to resolve the matter informally. If those attempts are unsuccessful, then a motion is filed with the judge. If the non-responsive entity is a party, a motion to compel discovery is filed. If the non-responsive entity is a non-party, a motion for issuance of a subpoena under 5 CFR 1201.81 is filed.

This proposed amendment also increases the time period in which initial discovery requests must be served from 25 days to 30 days after the date on which the judge issues the acknowledgment order. That order requires the production of the agency file within 20 days. The increase of time to 30 days should ensure that, in most cases, appellants have the opportunity to initiate discovery after they have seen what is in the Agency File. As is already the case, parties can seek permission to initiate discovery after the deadline has passed, and such permission should be granted where appropriate.

The proposed amendments also revise subparagraph (d)(4) to clarify that, if no other deadline has been specified, discovery must be completed no later than the prehearing or close of record conference. A proposed change in subparagraph (c)(i) reflects the MSPB's view that a motion to compel must contain a statement showing that the request was not only for relevant and material information, but that the scope of the request was reasonable. The proposed amendment also makes several other minor changes in the regulation.

Section 1201.93 Procedures

The proposed amendment of this regulation replaces the word ''hearing'' with the word ''appeal'' because there may or may not be a pending hearing in a case where an interlocutory appeal has been certified to the Board. The term ''stay the processing of the appeal'' is also proposed to be inserted in lieu of the term ''stay the appeal'' to avoid any ambiguity.

Section 1201.101 Explanation and Definitions

This proposed change will clarify that Mediation Appeals Program (MAP) mediators and settlement judges may discuss the merits of an MSPB case with a party without running afoul of the prohibition on ex parte communication. Some parties, confused on this issue, believe that while a mediator or settlement judge may discuss settlement terms ex parte, they cannot discuss the merits of a case, even within the context of settlement discussions.

Section 1201.111 Initial Decision by the Judge

This proposed amendment would delete language about serving OPM and the Clerk of the Board to conform with longstanding Board practice. OPM has access to all of the Board's initial and final decisions via the MSPB Extranet, and is not separately served with each initial decision as it is issued. The Clerk of the Board has immediate access to all issued initial decisions.

Section 1201.112 Jurisdiction of the Judge

This proposed amendment would allow an administrative judge to vacate an initial decision to accept a settlement agreement into the record when the settlement agreement is filed by the parties prior to the deadline for filing a petition for review, but is not received until after the date when the initial decision would become the Board's final decision by operation of law.

Section 1201.113 Finality of Decision

The proposed amendment to paragraph (a) is intended to conform this regulation to the proposed revision to 5 CFR 1201.112(a)(4) described above. Paragraph (f) is added to indicate that the Board will make a referral to OSC to investigate and take any appropriate disciplinary action whenever the Board finds that an agency has engaged in reprisal against an individual for making a protected whistleblowing disclosure. Previously,

the MSPB's regulations (5 CFR 1209.13) only required a referral when retaliation was found in an IRA appeal. Such referrals will also be made when retaliation for whistleblowing is found in an otherwise appealable action.

Section 1201.114 Petition and Cross Petition for Review—Content and Procedure

The MSPB proposes to institute page limitations for pleadings on petition for review, allow for replies to responses to petitions for review, and define petitions for review and cross petitions for review. Courts and many other federal agencies currently have page limitations on pleadings. Subsection (e) incorporates by reference the rules governing constructive receipt as proposed for 5 CFR 1201.22(b)(3). Finally, paragraph (b) now specifies that a petition or cross petition for review must include ''all of the party's legal and factual arguments.'' This was added to ensure that parties do not assume that the MSPB works like many courts, where all that is required is to file a notice of appeal with the appellate court, and the Clerk of that court then promulgates a briefing schedule.

Section 1201.115 Criteria for Granting Petition or Cross Petition for Review

The proposed amendments set forth here address the criteria for granting petitions and cross petitions for review. The Board will grant a petition for review whenever the petitioner demonstrates that the initial decision was wrongly decided, or that the adjudication process was so unfair that the petitioner did not have an appropriate opportunity to develop the record. The proposed regulation lists the 4 most common situations in which a petition or cross petition for review will be granted, but specifies that this listing is not exhaustive.

Section 1201.116 Compliance With Orders for Interim Relief

The proposed modifications to this regulation will combine the existing contents of 5 CFR 1201.116 with the provisions of 5 CFR 1201.115(b) and (c).

Section 1201.117 Procedures for Review or Reopening

The proposed revision to subparagraph (a)(1) reflects the significant revision to 5 CFR 1201.118, which would restrict ''reopening'' to situations in which the Board members have previously issued a final order or the initial decision has become the Board's final order by operation of law.

Section 1201.118 Board Reopening of Final Decisions

The proposed amendment is intended to change the current Board practice of ''reopen[ing] the appeal on the Board's own motion under 5 CFR 1201.118'' when a party's petition for review is denied, but the Board deems it appropriate to issue an Opinion and Order. The MSPB believes the better practice would be to amend its regulations to state that ''reopening'' only applies to, and should be reserved for, instances in which the Board has already issued a final order or the initial decision has become the Board's final decision by operation of law.

The MSPB's current practice may involve a misinterpretation of 5 U.S.C. 7701(e), which provides that an initial decision ''shall be final unless—(A) a party to the appeal or the Director [of OPM] petitions the Board for review within 30 days after the receipt of the decision; or (B) the Board reopens and reconsiders a case on its own motion.'' As now read by the MSPB, if either party files a timely petition for review, the appeal remains ''open'' and there is no final decision until the Board issues an Opinion and Order or Final Order.

In addition to clarifying the situations in which an appeal may be reopened, the proposed amendment corrects an apparent anomaly in the current regulations in that, as presently written, 5 CFR 1201.118 applies only to the reopening of initial decisions. Neither 5 CFR 1201.118 nor any other existing regulation discusses the Board's authority under 5 U.S.C. 7701(e) to reopen a final decision issued by the Board itself. The proposed revision addresses reopening of all final Board decisions, whether issued by the Board or when an initial decision has become the Board's final decision. It also incorporates well-established case law as to the rare and limited circumstances in which the Board will reopen a final decision.

Section 1201.119 OPM Petition for Reconsideration

The MSPB proposes to make minor wording changes in this regulation in light of the language used in 5 CFR 1201.117 and 1201.118, and to eliminate any confusion between ''Final Order'' as the document title of a particular type of final Board decision and the generic term ''final decision,'' which applies to any type of final decision, whether it be an Opinion and Order or a ''Final Order.''

Section 1201.122 Filing Complaint; Serving Documents on Parties

This proposed amendment is designed to correct an oversight in the MSPB's regulations. When e-Appeal Online was first established, it could not accommodate the initial filing in an original jurisdiction action. That was remedied a few years ago, and the e-filing regulation itself, 5 CFR 1201.14, was amended so that it no longer excludes from e-filing the initial filing in original jurisdiction actions. 73 FR 10127, 10129 (2008). Unfortunately, the regulations governing the filing of particular original jurisdiction actions were not amended, and they still prohibit using e-Appeal Online to file the initial pleading in these cases. Paragraph (a) is amended to require OSC to file a single copy of the complaint.

Regarding the deletion of paragraphs (d) and (e), we note that other special types of proceedings—including petitions for enforcement under 5 CFR 1201.182 and motions for attorney fees under 5 CFR 1201.203—do not address the acceptable methods of service. That is unnecessary, as the matter is covered generally under 5 CFR 1201.4(i) and 5 CFR 1201.14, and 5 CFR 1201.121(a) specifies that, except where otherwise expressly provided, the provisions of subpart B (which includes 5 CFR 1201.14) apply to original jurisdiction cases.

Section 1201.128 Filing Complaint; Serving Documents on Parties

See explanation under 5 CFR 1201.122.

Section 1201.134 Deciding Official; Filing Stay Request; Serving Documents on Parties

See explanation under 5 CFR 1201.122.

Section 1201.137 Covered Actions; Filing Complaint; Serving Documents on Parties

See explanation under 5 CFR 1201.122.

Section 1201.142 Actions Filed by Administrative Law Judges

This proposed amendment corrects a typographical error. The reference to 5 CFR 1201.37 in the second sentence should be changed to 5 CFR 1201.137.

Section 1201.143 Right to Hearing; Filing Complaint; Serving Documents on Parties

See explanation under 5 CFR 1201.122.

Section 1201.153 Contents of Appeal

The MSPB proposes to amend (a)(2) to clarify that not all discrimination matters may be raised with the Board. The MSPB is also proposing to substitute the term ''under a negotiated grievance procedure'' for the word ''grievance'' to reflect that these are the only types of grievances covered under the mixed cases regulations.

Section 1201.154 Time for Filing Appeal; Closing Record in Cases Involving Grievance Decisions

The MSPB proposes to incorporate by reference the rules governing constructive receipt as proposed for 5 CFR 1201.22(b)(3). See explanation above.

Section 1201.155 Requests for Review of Arbitrators' Decisions

The MSPB proposes to remove the existing regulation as unnecessary and put in its place a new regulation addressing requests for review of arbitrators' decisions. Although requests for review of arbitrators' decisions under 5 U.S.C. 7121(d) by definition must include claims of unlawful discrimination under 5 U.S.C. 2302(b)(1), they are quite different from other mixed cases covered by Subpart E of Part 1201, in that they have not been adjudicated in the Board's regional offices by administrative judges pursuant the provisions of Part 1201. Because of this, arbitrators' decisions are subject to a much more lenient standard of review than are decisions by administrative judges. *See, e.g., Fanelli* v. *Department of Agriculture,* 109 M.S.P.R. 115, ¶ 6 (2008).Because of these differences, the MSPB concluded that such requests merited a single regulation devoted to that subject. Therefore, this revised regulation removed the existing regulation at 5 CFR 1201.154(d) and moved into 5 CFR 1201.155.

The Board proposes to amend paragraphs (a) and (b) of the transferred regulation. It has long been established in case law that the Board has jurisdiction to review arbitration decisions in which an appellant is raising claims of unlawful discrimination, even when the appellant failed to raise the discrimination issue before the arbitrator. This was not always the case. The Board had held that its review was limited to discrimination claims that were raised before the arbitrator until the Federal Circuit's contrary ruling in *Jones* v. *Department of the Navy,* 898 F.2d 133, 135–36 (Fed. Cir. 1990). That decision was based on the court's analysis and interpretation of the requirements of both statute (5 U.S.C. 7121(d) and 7702(a)(1)) and regulation (5 CFR 1201.151, .155, and .156), and the court specifically noted that no statute or regulation had been called to its attention that required an issue of prohibited discrimination to be raised before an arbitrator before the Board would have jurisdiction to consider it on appeal. 898 F.2d at 135. The proposed rule would restore the rule that existed prior to the Federal Circuit's decision in *Jones.* As required by sections 7121(d) and 7702(a)(1), the employee would still receive Board review of both the Title 5 claim and the discrimination claim(s), so long as the discrimination claim was raised before the arbitrator.

In addition to moving and amending the existing regulatory language, the MSPB proposes to add a new paragraph (d), which provides that the Board may, in its discretion, ''develop the record as to a claim of prohibited discrimination by ordering the parties to submit additional evidence or forwarding the request for review to an administrative judge to conduct a hearing.'' This is because even when the discrimination claim was raised before the arbitrator, the factual record may be insufficiently developed to allow the Board to resolve the discrimination claim(s). Thus, the revised regulation would give the Board the option of ordering the parties to supplement the record or forwarding the matter to an administrative judge to gather additional evidence and/or conduct a hearing and make factual findings.

Section 1201.181 Authority and Explanation

The proposed amendments to this regulation are not substantive, but merely reorder the information and add descriptive labels to each paragraph.

Section 1201.182 Petition for Enforcement

The proposed amendments to this regulation clarify that the Board's enforcement authority under 5 U.S.C. 1204(a)(2) extends to situations in which a party asks the Board to enforce the terms of a settlement agreement entered into the record for purposes of enforcement as well as to situations in which a party asks the Board to enforce the terms of a final decision or order.

Section 1201.183 Procedures for Processing Petitions for Enforcement

The proposed amendments to this regulation would change the nature of an administrative judge's decision in a compliance proceeding from a ''recommendation'' to a regular initial decision, which would become the Board's final decision if a petition for review is not filed or is denied. The goal is to ensure, to the extent feasible, that all relevant evidence is produced during the regional office proceeding, and that the initial decision actually resolves all contested issues: ''[T]he judge will issue an initial decision resolving all issues raised in the petition for enforcement, and identifying the specific actions the noncomplying party must take * * *'' In addition, the amended regulation provides that the ''responsible agency official'' whose pay may be suspended should a finding of noncompliance become the Board's final decision will be served with a copy of any initial decision finding the agency in noncompliance.

To the extent that an agency found to be in noncompliance decides to take the compliance actions identified in the initial decision, the proposed regulation increases the period for providing evidence of compliance from 15 days to 30 days. This was done for several of reasons. First, where the initial decision is the first time that the agency learns definitively what actions it must take, 15 days would rarely be sufficient to have taken all required actions, e.g., the issuance of SF–52s and/or SF–50s and action taken by a payroll office. Second, the MSPB determined that there should not be different deadlines for submitting evidence of compliance as compared to contesting compliance actions with which the agency disagrees by filing a petition for review.

As noted above, the proposed revision to 5 CFR 1201.182 explains that the MSPB considers petitions for enforcement in two different situations: (1) When the MSPB has ordered relief or corrective action and (2) when the parties have entered a settlement agreement into the record for enforcement. Proposed new paragraph (c) in 5 CFR 1201.183 codifies existing case law regarding the different burdens of proof that apply in these enforcement actions depending on whether the Board is adjudicating a petition to enforce relief ordered by the Board (typically status quo ante relief when the Board has not sustained an agency action), or a petition to enforce a settlement agreement that a party is alleging that the other party breached. *See, e.g., Kerr* v. *National Endowment for the Arts,* 726 F.2d 730, 732–33 (Fed. Cir. 1984) (emphasizing the Board's obligation, in ensuring status quo ante relief in a compliance action, to ''make a substantive assessment of whether the actual duties and responsibilities to which the employee was returned are

either the same as or substantially equivalent in scope and status to the duties and responsibilities held prior to the wrongful discharge''); *House* v. *Department of the Army,* 98 M.S.P.R. 530, ¶ 14 (2005) (when the Board orders an agency action cancelled, the agency must return the appellant, as nearly as possible, to the status quo ante, which requires, in most instances, restoring the appellant to the position he occupied prior to the adverse action or placing him in a position that is substantially equivalent); *Fredendall* v. *Veterans Administration,* 38 M.S.P.R. 366, 370–71 (1988) (adopting judicial precedent that an action to enforce a settlement agreement is analogous to an action for breach of contract, and the burden of proof in an action for breach of contract rests on the plaintiff). Both the Board and the Federal Circuit have emphasized that, even though an appellant who alleges that the agency breached a settlement agreement bears the burden of proof, the agency bears the burden to produce relevant evidence regarding its compliance. *See Perry* v. *Department of the Army,* 992 F.2d 1575, 1588 (Fed. Cir. 1993); *Fredendall,* 38 M.S.P.R. at 371.

Heading of Subpart H

The Board proposes to revise the heading for Subpart H of Part 1201 to reflect that the subpart, as the MSPB proposes to amend herein, addresses attorney fees and related costs, consequential damages, compensatory damages, and liquidated damages.

Section 1201.201 Statement of Purpose

The MSPB proposes to amend this regulation by adding a provision relating to awards of liquidated damages under VEOA.

Section 1202.202 Authority for Awards

The MSPB proposes to amend this regulation by adding a provision relating to awards of liquidated damages under VEOA.

Section 1201.204 Proceedings for Consequential, Liquidated, and Compensatory Damages

The MSPB proposes to change ''3-member Board'' to ''the Board'' in order to cover situations in which there are only two Board members. In addition, because requests for ''liquidated damages'' in VEOA appeals are also handled in addendum proceedings, the MSPB proposes to modify this regulation to include requests for such damages.

Appendix III to Part 1201

The MSPB proposes to remove and reserve Appendix III. See earlier discussion regarding proposal to amend 5 CFR 1201.51(d).

Section 1203.2 Definitions

The MSPB proposes to revise this regulation to acknowledge that there are now 12 prohibited personnel practices.

Section 1208.3 Application of 5 CFR Part 1201

The MSPB proposes to amend this section to reflect the references to liquidated damages in section 5 CFR 1201.204.

Section 1208.21 VEOA Exhaustion Requirement

The purpose of the proposed revision to paragraph (a) is to clarify and codify an appellant's burden of proving exhaustion in a VEOA appeal. 5 CFR 1208.21 currently explains that to exhaust his administrative remedies with the Department of Labor (DOL), an appellant must file a complaint with DOL and allow DOL 60 days to resolve the complaint. However, this provides an incomplete and misleading picture of the exhaustion process. It is incomplete because it does not include the exhaustion requirement that DOL close the complaint, either on its own accord or based on a letter from the appellant after 60 days have elapsed stating that the appellant intends to file a Board appeal. *See* 5 U.S.C. 3330a (d)(1); *Burroughs* v. *Department of Defense,* 114 M.S.P.R. 647, ¶¶ 7–9 (2010) (the administrative judge erred in finding that the appellant exhausted his administrative remedy with DOL based on the mere fact that the appellant filed a complaint and waited 60 days before appealing to the Board); *Becker* v. *Department of Veterans Affairs,* 107 M.S.P.R. 327, ¶¶ 9, 11 (2007); 5 CFR 1208.23(a)(5). It is misleading because it does not account for the fact that DOL might close its investigation before 60 days have elapsed. The proposed revision provides a more accurate and complete picture of what is required to establish exhaustion in a VEOA appeal.

The addition of paragraph (b) regarding equitable tolling reflects the Federal Circuit's ruling in *Kirkendall* v. *Department of the Army,* 479 F.3d 830, 836–44 (Fed. Cir. 2007) (en banc).

Section 1208.22 Time of Filing

The MSPB proposes to add paragraph (c) to address the possibility of excusing an untimely filed appeal under the doctrine of equitable tolling.

Section 1208.23 Content of a VEOA Appeal; Request for Hearing

Subparagraphs (a)(2)–(5) of the current 5 CFR 1208.23 require that a VEOA appeal contain information to establish Board jurisdiction. *See Jarrard* v. *Department of Justice,* 113 M.S.P.R. 502, ¶ 9 (2010) (jurisdictional elements in a VEOA appeal). In particular, current subparagraphs (a)(4)–(5) require that an appellant submit evidence that he exhausted his remedy with DOL. *See Downs* v. *Department of Veterans Affairs,* 110 M.S.P.R. 139, ¶ 7 (2008) (exhaustion of the administrative remedy is a jurisdictional requirement in a VEOA appeal). However, the current provisions pertaining to the exhaustion requirement are incomplete. Both the Board and the Federal Circuit have found that the Board has VEOA jurisdiction only over the particular claims for which an appellant has exhausted his administrative remedy. *See Gingery* v. *Department of the Treasury,* 2010 WL 3937577 at *5 (Fed. Cir. 2010); *Burroughs* v. *Department of the Army,* 2011 MSPB 30, ¶¶ 9–10; *White* v. *U.S. Postal Service,* 114 M.S.P.R. 574, ¶ 9 (2010). The first step of the statutory exhaustion process is to ''file a complaint with DOL containing 'a summary of the allegations that form the basis for the complaint.' '' *Gingery,* 2010 WL 3937577 at *5 (quoting 5 U.S.C. 3330a(a)(2)(B)); *Burroughs,* 2011 MSPB 30, ¶ 9. The purpose of this requirement is to afford DOL an opportunity to investigate the claim before involving the Board in the matter, which is the same as the purpose of the exhaustion requirement in an IRA appeal. *See Gingery,* 2010 WL 3937577 at *5 (citing *Ward* v. *Merit Systems Protection Board,* 981 F.2d 521, 526 (Fed. Cir. 1992)); *Burroughs,* 2011 MSPB 30, ¶ 9. In order for the Board to make a jurisdictional ruling in a VEOA appeal, it must have evidence of the particular claims that the appellant raised before DOL, but an appellant can meet the literal requirements of the Board's current regulations without submitting any such evidence.

Because it is now clear that the Board and the court will scrutinize the exhaustion issue in a VEOA appeal in the same way that they scrutinize the exhaustion issue in an IRA appeal, the Board's regulations on VEOA exhaustion ought to reflect that fact. *See Gingery,* 2010 WL 3937577 at *5 (''when an appellant's complaint entirely fails to inform the DOL of a particular alleged violation or ground for relief, the Board lacks jurisdiction over the claim''); *cf. Boechler* v. *Department of the Interior,* 109 M.S.P.R. 638, ¶ 6 (2008) (the Board

may consider only those charges of whistleblowing that the appellant raised before OSC), *aff'd,* 328 F. App'x 660 (Fed. Cir. 2009). The proposed amendment would, therefore, add a new subparagraph between current 5 CFR 1208.23(a)(4) and (5), stating that a VEOA appeal must contain evidence to identify the specific claims that the appellant raised before DOL.

In drafting the proposed revision, the MSPB considered that an appellant might exhaust his administrative remedy on an issue that was not mentioned in the original 5 U.S.C. 3330a(1) complaint itself. *Cf. Covarrubias* v. *Social Security Administration,* 113 M.S.P.R. 583, ¶ 19 (2010) (''in showing that the exhaustion requirement [in an IRA appeal] has been met, the appellant is not limited by the statements in her initial complaint, but may also rely on subsequent correspondence with OSC''). Therefore, the proposed revision does not require an appellant to submit evidence of the issues raised in the ''complaint,'' and it does not suggest that the requirements of the section can be satisfied by submitting a copy of the complaint. Rather, the proposed amendment is broad enough to encompass all matters that an appellant might have raised before DOL during the course of the complaint process.

Section 1209.2 Jurisdiction

The MSPB proposes to change the reference in paragraph (a) from 5 U.S.C. 1214(a)(3) to 5 U.S.C. 1221(a). The latter provision is the one that authorizes appeals to the Board for claims of reprisal for protected whistleblowing. Section 1214(a)(3) contains the exhaustion requirement applicable to IRA appeals that do not involve an otherwise appealable action. The revised regulation also includes several new examples to aid in determining the MSPB's jurisdiction over IRA appeals.

Most importantly, this proposed regulation would overrule a significant body of Board case law. Starting with its decision in *Massimino* v. *Department of Veterans Affairs,* 58 M.S.P.R. 318 (1993), the Board has consistently maintained the position that an individual who claims that an otherwise appealable action was taken against him in retaliation for making whistleblowing disclosures, and who seeks corrective action from the Special Counsel before filing an appeal with the Board, retains all the rights associated with an otherwise appealable action in the Board appeal. In an adverse action, for example, the agency must prove its charges, nexus, and the reasonableness of the penalty by a preponderance of the evidence, and the appellant is free to assert any affirmative defense he might have, including harmful procedural error and discrimination prohibited by 5 U S C. 2302(b)(1). In an IRA appeal, however, the only issue before the Board is whether the agency took one or more covered personnel actions against the appellant in retaliation for making protected whistleblowing disclosures.

In 1994, the year after *Massimino* was issued, Congress amended 5 U.S.C. 7121 to add paragraph (g). Public Law 103–424, section 9(b), 108 Stat. 4361, 4365–66 (1994). Subsection (g)(3) provides that an employee affected by a prohibited personnel practice ''may elect not more than one'' of 3 remedies: (A) An appeal to the Board under 5 U.S.C. 7701; (B) a negotiated grievance under 5 U.S.C. 7121(d); or (C) corrective action under subchapters II and III of 5 U.S.C. chapter 12, i.e., a complaint filed with OSC (5 U.S.C. 1214), which can be followed by an IRA appeal filed with the Board (5 U.S.C. 1221). Under 5 U.S.C. 7121(g)(4), an election is deemed to have been made based on which of the 3 actions the individual files first.

A plain reading of 5 U.S.C. 7121(g) indicates that, contrary to *Massimino,* an individual who has been subjected to an otherwise appealable action, but who seeks corrective action from OSC before filing an appeal with the Board, has elected an IRA appeal, and is limited to the rights associated with such an appeal, i.e., the only issue before the Board is whether the agency took one or more covered personnel actions against the appellant in retaliation for making protected whistleblowing disclosures; the agency need not prove the elements of its case, and the appellant may not raise other affirmative defenses. The Board has never reconsidered or amended its holding in *Massimino* in light of the 1994 amendment to section 7121, despite the fact that OSC later suggested that the Board change its regulatory guidance in 5 CFR 1201.21 ''to include notice of the right to file a prohibited personnel practice complaint with the Special Counsel and the requirement for making an election among a grievance, an appeal to MSPB, and a complaint to the Special Counsel.'' See 65 FR 25623, 25624 (2000). The proposed rule adopts this plain language reading of 5 U.S.C. 7121(g) and overrules *Massimino* and its progeny.

When taking an otherwise appealable action, agencies would be required, per revised 5 CFR 1201.21, to advise employees of their options under 5 U.S.C. 7121(g) and the consequences of such an election, including the fact that the employee would be foregoing important rights if he or she seeks corrective action from OSC before filing with the Board.

Section 1209.4 Definitions

The Board's case law, as well as its acknowledgment and jurisdictional orders, speak in terms of ''protected disclosures,'' but this regulation defines ''whistleblowing'' and the Part 1209 regulations refer in several places to ''whistleblowing activities.'' This minor revision to the definition combines the two concepts so that the use of ''whistleblowing activities'' is not ambiguous.

Section 1209.5 Time of Filing

The MSPB proposes to amend this regulation to eliminate the distinction between IRA appeals and otherwise appealable actions in light of the change made to 5 CFR 1209.2; and revise the language regarding equitable tolling consistent with the changes made in sections 5 CFR 1208.21 and .22. In a number of IRA appeals, the Board has considered whether an untimely appeal can be excused under the doctrine of equitable tolling. *See, e.g., Pacilli* v. *Department of Veterans Affairs,* 113 M.S.P.R. 526, ¶ 11 1011 10; *Bauer* v. *Department of the Army,* 88 M.S.P.R. 352, ¶¶ 8–9 (2001); *Wood* v. *Department of the Air Force,* 54 M.S.P.R. 587, 593 (1992). As in VEOA appeals, the MSPB believes that the possibility of excusing the filing deadline under the doctrine of equitable tolling should be addressed in the Board's timeliness regulation

Section 1209.6 Content of Appeal; Right to Hearing

As with the proposed modification to 5 CFR 1201.24(d), this proposed rule clarifies that an appellant does not automatically have a right to a hearing in every Board appeal; the right exists, if at all, only when the appeal has been timely filed and the appellant has established jurisdiction over the appeal.

List of Subjects in 5 CFR Parts 1200, 1201, 1203, 1208, and 1209

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, the Board proposes to amend 5 CFR parts 1200, 1201, 1203, 1208, and 1209 as follows:

PART 1200—[AMENDED]

1. The authority citation for 5 CFR part 1200 continues to read as follows:

Authority: 5 U.S.C. 1201 *et seq.*

2. Add § 1200.4 as follows:

§ 1200.4 Petition for Rulemaking.

(a) Any interested person may petition the MSPB for the issuance, amendment, or repeal of a rule. For purposes of this regulation, a ''rule'' means a regulation contained in 5 CFR parts 1200 through 1214. Each petition shall:

(1) Be submitted to the Clerk of the Board, 1615 M Street NW., Washington, DC 20419;

(2) Set forth the text or substance of the rule or amendment proposed or specify the rule sought to be repealed;

(3) Explain the petitioner's interest in the action sought; and

(4) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) No public procedures will be held on the petition before its disposition. If the MSPB finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate. If the Board finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Board may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

PART 1201—PRACTICES AND PROCEDURES

3. The authority citation for 5 CFR part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

4. Revise paragraph (a) of § 1201.3 to read as follows:

§ 1201.3 Appellate Jurisdiction.

(a) *Generally.* The Board's appellate jurisdiction is limited to those matters over which it has been given jurisdiction by law, rule or regulation. The Board's jurisdiction does not depend solely on the nature of the action or decision taken or made but may also depend on the type of federal appointment the individual received, e.g., competitive or excepted service, whether an individual is preference eligible, and other factors. Accordingly, the laws and regulations cited below, which are the source of the Board's jurisdiction, should be consulted to determine not only the nature of the actions or decisions that are appealable, but also the limitations as to the types of employees, former employees, or applicants for employment who may assert them. Instances in which a law or regulation authorizes the Board to hear an appeal or claim include the following:

(1) *Adverse Actions.* Removals (terminations of employment after completion of probationary or other initial service period), reductions in grade or pay, suspension for more than 14 days, or furloughs for 30 days or less for cause that will promote the efficiency of the service; an involuntary resignation or retirement is considered to be a removal (5 U.S.C. 7511–7514; 5 CFR part 752, subparts C and D);

(2) *Retirement Appeals.* Determinations affecting the rights or interests of an individual under the federal retirement laws (5 U.S.C. 8347(d)(1)–(2) and 8461(e)(1); and 5 U.S.C. 8331 note; 5 CFR parts 831, 839, 842, 844, and 846);

(3) *Termination of Probationary Employment.* Appealable issues are limited to a determination that the termination was motivated by partisan political reasons or marital status, and/or if the termination was based on a pre-appointment reason, whether the agency failed to take required procedures. These appeals are not generally available to employees in the excepted service. (38 U.S.C. 2014(b)(1)(D); 5 CFR 315.806 & 315.908(b));

(4) *Restoration to Employment Following Recovery from a Work-Related Injury.* Failure to restore, improper restoration of, or failure to return following a leave of absence following recovery from a compensable injury. (5 CFR 353.304);

(5) *Performance-Based Actions Under Chapter 43.* Reduction in grade or removal for unacceptable performance (5 U.S.C. 4303(e); 5 CFR part 432);

(6) *Reduction in Force.* Separation, demotion, or furlough for more than 30 days, when the action was effected because of a reduction in force (5 CFR 351.901); Reduction-in-force action affecting a career or career candidate appointee in the Foreign Service (22 U.S.C. 4011);

(7) *Employment Practices Appeal.* Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104);

(8) *Denial of Within-Grade Pay Increase.* Reconsideration decision sustaining a negative determination of competence for a general schedule employee (5 U.S.C. 5335(c); 5 CFR 531.410);

(9) *Negative Suitability Determination.* Disqualification of an employee or applicant because of a suitability determination (5 CFR 731.501). Suitability determinations relate to an individual's character or conduct that may have an impact on the integrity or efficiency of the service;

(10) *Various Actions Involving the Senior Executive Service.* Removal or suspension for more than 14 days (5 U.S.C. 7511–7514; 5 CFR part 752, subparts E and F); Reduction-in-force action affecting a career appointee (5 U.S.C. 3595); or Furlough of a career appointee (5 CFR 359.805); and

(11) *Miscellaneous Restoration and Reemployment Matters.* Failure to afford reemployment priority right pursuant to a Reemployment Priority List following separation by reduction in force, or full recovery from a compensable injury after more than 1 year, because of the employment of another person (5 CFR 330.214, 302.501); Failure to reinstate a former employee after service under the Foreign Assistance Act of 1961 (5 CFR 352.508); Failure to re-employ a former employee after movement between executive agencies during an emergency (5 CFR 352.209); Failure to re-employ a former employee after detail or transfer to an international organization (5 CFR 352.313); Failure to re-employ a former employee after service under the Indian Self-Determination Act (5 CFR 352.707); or Failure to re-employ a former employee after service under the Taiwan Relations Act (5 CFR 352.807).

* * * * *

5. In § 1201.4 revise paragraphs (a) and (j) to read as follows:

§ 1201.4 General definitions.

(a) *Judge.* Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including an administrative law judge appointed under 5 U.S.C. 3105 or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge.

* * * * *

(j) *Date of service.* ''Date of service'' has the same meaning as ''date of filing'' under paragraph (l) of this section. Unless a different deadline is specified by the administrative judge or other designated Board official, whenever a regulation in this part bases a party's deadline for filing a pleading on the date of service of some previous document, and the previous document was served on the party by mail, the filing deadline will be extended by 5 calendar days.

* * * * *

6. In § 1201.14 revise paragraphs (c) and (m) as follows:

§ 1201.14 Electronic Filing Procedures.

* * * * *

(c) *Matters excluded from electronic filing.* Electronic filing may not be used to:

(1) File a request to hear a case as a class appeal or any opposition thereto (§ 1201.27);

(2) Serve a subpoena (§ 1201.83);

(3) File a pleading with the Special Panel (§ 1201.137);

(4) File a pleading that contains Sensitive Security Information (SSI) (49 CFR parts 15 and 1520);

(5) File a pleading that contains classified information (32 CFR part 2001); or

(6) File a request to participate as an amicus curiae or file a brief as amicus curiae pursuant to § 1201.34 of this part.

* * * * *

(m) *Date electronic documents are filed and served.*

(1) As provided in § 1201.4(l) of this Part, the date of filing for pleadings filed via e-Appeal Online is the date of electronic submission. All pleadings filed via e-Appeal Online are time stamped with Eastern Time, but the timeliness of a pleading will be determined based on the time zone from which the pleading was submitted. For example, a pleading filed at 11 p.m. Pacific Time on August 20 will be stamped by e-Appeal Online as being filed at 2 a.m. Eastern Time on August 21. However, if the pleading was required to be filed with the Washington Regional Office (in the Eastern Time Zone) on August 20, it would be considered timely, as it was submitted prior to midnight Pacific Time on August 20.

(2) * * *

* * * * *

7. In § 1201.21 revise paragraph (d) and add a new paragraph (e) as follows:

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

* * * * *

(d) Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) * * *

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with 1201.154(d) of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.

(e) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission, consistent with the provisions of 29 CFR 1614.302.

8. In § 1201.22 revise paragraph (b) by adding a new subparagraph (3) as follows:

§ 1201.22 Filing an appeal and responses to appeals.

* * * * *

(b) *Time of filing.* * * *

(1) * * *

(2) * * *

(3) An appellant is responsible for keeping the agency informed of his or her current home address for purposes of receiving the agency's decision, and correspondence which is properly addressed and sent to the appellant's address via postal or commercial delivery is presumed to have been duly delivered to the addressee. While such a presumption may be overcome under the circumstances of a particular case, an appellant may not avoid service of a properly addressed and mailed decision by intentional or negligent conduct which frustrates actual service. The appellant may also be deemed to have received the agency's decision if it was received by a designated representative, or a person of suitable age and discretion residing with the appellant. The following examples illustrate the application of this rule:

Example A: An appellant who fails to pick up mail delivered to his or her post office box is deemed to have received the agency decision.

Example B: An appellant who did not receive his or her mail while in the hospital overcomes the presumption of actual receipt.

Example C: An appellant is deemed to have received an agency decision received by his or her roommate.

* * * * *

9. Revise § 1201.23 to read as follows:

§ 1201.23 Computation of time.

In computing the number of days allowed for complying with any deadline, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

10. In § 1201.24 revise subparagraph (a)(7) and paragraph (d) to read as follows:

§ 1201.24 Content of an appeal; right to hearing.

(a) * * *

(7) Where applicable, a copy of the notice of proposed action, the agency decision being appealed and, if available, the SF–50 or similar notice of personnel action. No other attachments should be included with the appeal, as the agency will be submitting the documents required by 1201.25 of this part, and there will be several opportunities to submit evidence and argument after the appeal is filed. An appellant should not miss the deadline for filing merely because he or she does not currently have all of the documents specified in this section.

* * * * *

(d) *Right to hearing.* In an appeal under 5 U.S.C. 7701, an appellant generally has a right to a hearing on the merits if the appeal has been timely filed and the Board has jurisdiction over the appeal.

* * * * *

11. Revise § 1201.28 to read as follows:

§ 1201.28 Case suspension procedures.

(a) *Suspension period.* The judge may issue an order suspending the processing of an appeal for up to 30 days. The judge may grant a second order suspending the processing of an appeal for up to an additional 30 days.

(b) *Early termination of suspension period.* The administrative judge may terminate the suspension period upon joint request of the parties, or where the parties' request the judge's assistance and the judge's involvement is likely to be extensive.

(c) *Termination of suspension period.* If the final day of any suspension period falls on a day on which the Board is closed for business, adjudication shall resume as of the first business day following the expiration of the period.

12. Add § 1201.29 as follows:

§ 1201.29 Dismissal without prejudice.

(a) *In general.* A dismissal of an appeal without prejudice is a dismissal which allows for the refiling of the appeal in the future. A dismissal without prejudice is a procedural option committed to the judge's sound discretion, and is appropriate when the interests of fairness, due process, and administrative efficiency outweigh any prejudice to either party. A dismissal without prejudice may be granted at the request of either party or by the judge on his or her own motion. Subject to the

provisions of section 1201.12 of this part, a decision dismissing an appeal without prejudice shall include a date certain by which the appeal must be refiled.

(b) *Objection by appellant.* Where a dismissal without prejudice is issued over the objection of the appellant, the appeal will be automatically refiled as of a date certain.

(c) *Reinstatement of Appeal.* Depending on the type of case, the judge will determine whether a dismissal without prejudice must be refiled by the appellant or whether it will be automatically refiled as of a certain date. When the dismissed appeal must be refiled by the appellant and is refiled late, requests for a waiver of the late filing based upon good cause will be liberally construed.

13. In § 1201.31 revise paragraphs (b) and (d) as follows:

§ 1201.31 Representatives.

* * * * *

(b) A party may choose any representative as long as that person is willing and available to serve. The other party or parties may challenge the designation, however, on the ground that it involves a conflict of interest or a conflict of position. Any party who challenges the designation must do so by filing a motion with the judge within 15 days after the date of service of the notice of designation or 15 days after a party becomes aware of the conflict. The judge will rule on the motion before considering the merits of the appeal. These procedures apply equally to each designation of representative, regardless of whether the representative was the first one designated by a party or a subsequently designated representative. If a representative is disqualified, the judge will give the party whose representative was disqualified a reasonable time to obtain another one.

* * * * *

(d) As set forth in paragraphs (d) and (e) of section 1201.43 of this part, a judge may exclude a representative from all or any portion of the proceeding before him or her for contumacious conduct or conduct prejudicial to the administration of justice.

* * * * *

14. In § 1201.33 revise paragraph (a) to read as follows:

§ 1201.33 Federal witnesses.

(a) Every Federal agency or corporation, including nonparties, must make its employees or personnel available to furnish sworn statements or to appear at a deposition or hearing when ordered by the judge to do so. When providing those statements or appearing at the hearing, Federal employee witnesses will be in official duty status (i.e., entitled to pay and benefits including travel and per diem, where appropriate).

* * * * *

15. In § 1201.34 revise paragraph (e) to read as follows:

§ 1201.34 Intervenors and amicus curiae.

* * * * *

(e) *Amicus curiae.*

(1) An amicus curiae is a person or organization who, although not a party to an appeal, gives advice or suggestions by filing a brief with the judge or the Board regarding an appeal. Any person or organization, including those who do not qualify as intervenors, may request permission to file an amicus brief.

(2) A request to file an amicus curiae brief must include a statement of the person's or organization's interest in the appeal and how the brief will be relevant to the issues involved.

(3) The request may be granted, in the discretion of the judge or the Board, if the person or organization has a legitimate interest in the proceedings, and such participation will not unduly delay the outcome and may contribute materially to the proper disposition thereof.

(4) The amicus curiae shall submit its brief within the time limits set by the judge or the Board, and must comply with any further orders by the judge or the Board.

(5) An amicus curiae is not a party to the proceeding and may not participate in any way in the conduct of the hearing, including the presentation of evidence or the examination of witnesses. The Board may, in its discretion, invite an amicus curiae to participate in oral argument in proceedings in which oral argument is scheduled.

16. In § 1201.36 revise paragraph (a) to read as follows:

§ 1201.36 Consolidating and joining appeals.

(a) *Explanation.* (1) * * *

(2) Joinder occurs when one person has filed two or more appeals and they are united for consideration. For example, a judge might join an appeal challenging a 30-day suspension with a pending appeal challenging a subsequent removal if the same appellant filed both appeals.

* * * * *

17. In § 1201.41, revise the first sentence of paragraph (b) as follows:

§ 1201.41 Judges.

* * * * *

(b) *Authority.* Judges will conduct fair and impartial hearings and will issue timely and clear decisions based on statutes and legal precedents. * * *

* * * * *

18. In § 1201.42 revise paragraph (a) to read as follows:

§ 1201.42 Disqualifying a Judge.

(a) If a judge considers himself or herself disqualified, he or she will withdraw from the case, state on the record the reasons for doing so, and another judge will be promptly assigned.

* * * * *

19. In § 1201.43 revise the introductory paragraph and insert new paragraphs (d) and (e) to read as follows:

§ 1201.43 Sanctions.

The judge may impose sanctions upon the parties as necessary to serve the ends of justice. This authority covers, but is not limited to, the circumstances set forth in paragraphs (a), (b), (c), (d), and (e) of this section. Before imposing a sanction, the judge shall provide appropriate prior warning, allow a response to the actual or proposed sanction when feasible, and document the reasons for any resulting sanction in the record.

* * * * *

(d) *Exclusion of a representative or other person.* A judge may exclude or limit the participation of a representative or other person in the case for contumacious conduct or conduct prejudicial to the administration of justice. When the judge excludes a party's representative, the judge will afford the party a reasonable time to obtain another representative before proceeding with the case.

(e) *Cancellation, suspension, or termination of hearing.* A judge may cancel a scheduled hearing, or suspend or terminate a hearing in progress, for contumacious conduct or conduct prejudicial to the administration of justice on the part of the appellant or the appellant's representative. If the judge suspends a hearing, the parties must be given notice as to when the hearing will resume. If the judge cancels or terminates a hearing, the judge must set a reasonable time during which the record will be kept open for receipt of written submissions.

20. In § 1201.51 revise paragraph (d) to read as follows:

§ 1201.51 Scheduling the hearing.

* * * * *

(d) The Board has established certain approved hearing locations, which are listed on the Board's public Web site (*www.mspb.gov*). The judge will advise parties of these hearing sites as

appropriate. Parties, for good cause, may file motions requesting a different hearing location. Rulings on those motions will be based on a showing that a different location will be more advantageous to all parties and to the Board.

21. Revise § 1201.52 to read as follows:

§ 1201.52 Public hearings.

Hearings are open to the public. However, the judge may order a hearing or any part of a hearing closed when doing so would be in the best interests of the appellant, a witness, the public, or any other person affected by the proceeding. Any order closing the hearing will set out the reasons for the judge's decision. Any objections to the order will be made a part of the record. Absent express approval from the judge, no two-way communications devices may be operated and/or powered on in the hearing room. Further, no cameras, recording devices, and/or transmitting devices may be operated, operational, and/or powered on in the hearing room without the express approval of the judge.

22. Revise § 1201.53 to read as follows:

§ 1201.53 Record of proceedings.

(a) *Recordings.* A recording of the hearing is generally prepared by a court reporter, under the judge's guidance. Such a recording is included with the Board's copy of the appeal file and serves as the official hearing record. Judges may prepare recordings in some hearings, such as those conducted telephonically. Copies of recordings will be provided to parties without charge upon request.

(b) *Transcripts.* A ''transcript'' refers not only to printed copies of the hearing testimony, but also to electronic versions of such documents. Along with recordings, a transcript prepared by the court reporter is accepted by the Board as the official hearing record. Any party may request that the court reporter prepare a full or partial transcript, at the requesting party's expense. In the absence of a request by a party, and upon determining that a transcript would significantly assist in the preparation of a clear, complete, and timely decision, the judge or the Board may direct the agency to purchase a full or partial transcript from the court reporter, and to provide copies of such a transcript to the appellant and the Board. Judges do not prepare transcripts.

(c) *Copies.* Copies of recordings or existing transcripts will be provided upon request to parties free of charge. Such requests should be made in writing to the adjudicating regional or field office, or to the Clerk of the Board, as appropriate. Non-parties may request a copy of a hearing recording or existing transcript under the Freedom of Information Act (FOIA) and Part 1204 of the Board's regulation. A non-party may request a copy by writing to the appropriate Regional Director, the Chief Administrative Judge of the appropriate MSPB Field Office, or to the Clerk of the Board at MSPB headquarters in Washington, DC, as appropriate. Non-parties may also make FOIA requests online at *https://foia.mspb.gov.*

(d) *Corrections to transcript.* Any discrepancy between the transcript and the recording shall be resolved by the judge or the Clerk of the Board as appropriate. Corrections to the official transcript may be made on motion by a party or on the judge's own motion or by the Clerk of the Board as appropriate. Motions for corrections must be filed within 10 days after the receipt of a transcript. Corrections of the official transcript will be made only when substantive errors are found by the judge, or by the Clerk of the Board, as appropriate.

23. Revise § 1201.56(a) to read as follows:

§ 1201.56. Burden and degree of proof; affirmative defenses.

(a) Burden and degree of proof.

(1) *Agency.* The agency has the burden of proving:

(i) A performance-based action brought under 5 U.S.C. 4303 or 5335 by substantial evidence; and

(ii) All other agency actions by a preponderance of the evidence.

(2) *Appellant.*

(i) Jurisdiction. The appellant has the burden of establishing Board jurisdiction. Unless otherwise specified in Parts 1201, 1208, and 1209 of the Board's regulations, the jurisdictional elements for a particular type of appeal are established by the Board's case law. The Board will explicitly inform the appellant as to the requirements for establishing jurisdiction in a given case.

(A) The appellant must establish the following jurisdictional elements by preponderant evidence: Whether the appellant is a person entitled to bring the sort of appeal authorized by the law, rule, or regulation that gives the Board jurisdiction; whether the agency action or decision being challenged is of a type covered by the law, rule, or regulation that gives the Board jurisdiction; and whether the appellant has exhausted a required administrative remedy before filing a Board appeal. An appellant who makes a nonfrivolous allegation of a jurisdictional element under this paragraph is entitled to a jurisdictional hearing to establish the element by preponderant evidence. A nonfrivolous allegation is an allegation of facts that, if proven, would establish the jurisdictional element in question.

(B) Otherwise, jurisdiction is established by making nonfrivolous allegations of fact that, if proven, would entitle an appellant to relief.

(ii) Timeliness, affirmative defenses, and retirement matters. The appellant has the burden of proof, by preponderant evidence, with respect to:

(A) The timeliness of the appeal;

(B) Affirmative defenses as described in paragraph (c) of this section; and

(C) Entitlement to retirement benefits (where an appellant's application for such benefits has been denied by a reconsideration decision of the Office of Personnel Management).

(iii) Overpayments. The appellant has the burden of proof, by substantial evidence, with respect to eligibility for waiver or adjustment of an overpayment from the Civil Service Retirement and Disability Fund.

* * * * *

24. In § 1201.58 revise paragraph (c) to read as follows:

§ 1201.58 Closing the record.

* * * * *

(c) Once the record closes, additional evidence or argument will ordinarily not be accepted unless the party submitting it shows that the evidence or argument was not readily available before the record closed. Notwithstanding the close of the record, however, a party must be allowed to submit evidence or argument to rebut new evidence or argument submitted by the other party just before the close of the record. The judge will include in the record any supplemental citations received from the parties or approved corrections of the transcript, if one has been prepared.

§ 1201.62 [Removed]

25. Remove § 1201.62.

26. Amend § 1201.71 by adding two new sentences at the end as follows:

§ 1201.71 Purpose of discovery.

* * * Discovery requests and responses thereto are not to be filed in the first instance with the Board. They are only filed with the Board in connection with a motion to compel discovery under 1201.73(c) of this part, with a motion to subpoena discovery under 1201.73(d) of this part, or as substantive evidence to be considered in the appeal.

27. Revise § 1201.73 to read as follows:

§ 1201.73 Discovery procedures.

(a) *Initiating discovery.* A party seeking discovery must start the process by serving a request for discovery on the representative of the party or nonparty, or, if there is no representative, on the party or nonparty themselves. The request for discovery must state the time limit for responding, as prescribed in 1201.73(d) of this part, and must specify the time and place of the taking of the deposition, if applicable. When a party directs a request for discovery to the official or employee of a Federal agency that is a party, the agency must make the officer or employee available on official time to respond to the request, and must assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Responses to discovery requests.* A party or nonparty must answer a discovery request within the time provided under paragraph (d)(2) of this section, either by furnishing to the requesting party the information requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for the objection. Parties and nonparties may respond to discovery requests by electronic mail if authorized by the requesting party.

(c) *Motions to compel or issue a subpoena.* (1) If a party fails or refuses to respond in full to a discovery request, the requesting party may file a motion to compel discovery. If a nonparty fails or refuses to respond in full to a discovery request, the requesting party may file a motion for the issuance of a subpoena directed to the individual or entity from which the discovery is sought under the procedures described in 1201.81 of this part. The requesting party must serve a copy of the motion on the other party or nonparty. Before filing any motion to compel or issue a subpoena, the moving party shall discuss the anticipated motion with the opposing party or nonparty and all those involved shall make a good faith effort to resolve the discovery dispute and narrow the areas of disagreement. The motion shall include:

(i) A copy of the original request and a statement showing that the information sought is relevant and material and that the scope of the request is reasonable;

(ii) A copy of the response to the request (including the objections to discovery) or, where appropriate, a statement that no response has been received, along with an affidavit or sworn statement under 28 U.S.C. 1746 supporting the statement (See appendix IV to part 1201); and

(iii) A statement that the moving party has discussed or attempted to discuss the anticipated motion with the nonmoving party or nonparty, and made a good faith effort to resolve the discovery dispute and narrow the areas of disagreement.

(2) The party or nonparty from whom discovery was sought may respond to the motion to compel or the motion to issue a subpoena within the time limits stated in paragraph (d)(3) of this section.

(d) *Time limits.* (1) Unless otherwise directed by the judge, parties must serve their initial discovery requests within 30 days after the date on which the judge issues an order to the respondent agency to produce the agency file and response.

(2) A party or nonparty must file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the judge. Any discovery requests following the initial request must be served within 10 days of the date of service of the prior response, unless the parties are otherwise directed by the judge. Deposition witnesses must give their testimony at the time and place stated in the request for deposition or in the subpoena, unless the parties agree on another time or place.

(3) Any motion for an order to compel or issue a subpoena must be filed with the judge within 10 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired. Any pleading in opposition to a motion to compel or subpoena discovery must be filed with the judge within 10 days of the date of service of the motion.

(4) Discovery must be completed within the time period designated by the judge or, if no such period is designated, no later than the prehearing or close of record conference.

(e) *Limits on the number of discovery requests.* (1) Absent prior approval by the judge, interrogatories served by parties upon another party or a nonparty may not exceed 25 in number, including all discrete subparts.

(2) Absent prior approval by the judge or agreement by the parties, each party may not take more than 10 depositions.

(3) Requests to exceed the limitations set forth in paragraphs (g)(1) and (g)(2) of this section may be granted at the discretion of the judge. In considering such requests, the judge shall consider the factors identified in § 1201.72(d) of this part.

28. In § 1201.93. revise paragraph (c) to read as follows:

§ 1201.93 Procedures.

* * * * *

(c) *Stay of Appeal.* The judge has the authority to proceed with or to stay the processing of the appeal while an interlocutory appeal is pending with the Board. If the judge does not stay the appeal, the Board may do so while an interlocutory appeal is pending with it.

29. In § 1201.101 revise subparagraph (b)(2) to read as follows:

§ 1201.101 Explanation and definitions.

* * * * *

(b) * * *

(2) *Decision-making official* means any judge, officer or other employee of the Board designated to hear and decide cases except when such judge, officer, or other employee of the Board is serving as a mediator or settlement judge who is not the adjudicating judge.

30. In § 1201.111 revise paragraph (a) ro read as follows:

§ 1201.111 Initial decision by judge.

(a) The judge will prepare an initial decision after the record closes, and will serve that decision on all parties to the appeal, including named parties, permissive intervenors, and intervenors of right.

* * * * *

31. In § 1201.112 revise subparagraph (a)(4) to read as follows:

§ 1201.112 Jurisdiction of judge.

(a) * * *

(4) Vacate an initial decision to accept into the record a settlement agreement that is filed prior to the deadline for filing a petition for review, but is not received until after the date when the initial decision becomes final under 1201.113 of this part.

* * * * *

32. In § 1201.113 revise paragraphs (a) and (f) to read as follows:

§ 1201.113 Finality of decision.

The initial decision of the judge will become the Board's final 35 days after issuance. Initial decisions are not precedential.

(a) Exceptions. The initial decision will not become the Board's final decision if within the time limit for filing specified in 1201.114 of this part, any party files a petition for review or, if no petition for review is filed, files a request that the initial decision be vacated for the purpose of accepting a settlement agreement into the record.

* * * * *

(f) When the Board, by final decision or order, finds there is reason to believe a current Federal employee may have committed a prohibited personnel practice described at 5 U.S.C.

2302(b)(8), the Board will refer the matter to the Special Counsel to investigate and take appropriate action under 5 U.S.C. 1215.

* * * * *

33. Revise § 1201.114 as follows:

§ 1201.114 Petition and cross petition for review—content and procedure.

(a) *Pleadings allowed.* Pleadings allowed on review include a petition for review, a cross petition for review, a response to a petition for review, a response to a cross petition for review, and a reply to a response to a petition for review.

(1) A petition for review is a pleading in which a party contends that an initial decision was incorrectly decided in whole or in part.

(2) A cross petition for review has the same meaning as a petition for review, but is used to describe a pleading that is filed by a party when another party has already filed a timely petition for review.

(3) A response to a petition for review and a cross petition for review may be contained in a single pleading.

(4) A reply to a response to a petition for review is limited to the factual and legal issues raised by another party in the response to the petition for review. It may not raise new allegations of error.

(5) No pleading other than the ones described in this paragraph will be accepted unless the party files a motion with and obtains leave from the Clerk of the Board. The motion must describe the nature of and need for the pleading.

(b) *Contents of petition or cross petition for review.* A petition or cross petition for review states a party's objections to the initial decision, including all of the party's legal and factual arguments, and must be supported by references to applicable laws or regulations and by specific references to the record. Any petition or cross petition for review that contains new evidence or argument must include an explanation why the evidence or argument was not presented before the record below closed (see 1201.58 of this part). A petition or cross petition for review should not include documents that were part of the record below, as the entire administrative record will be available to the Board.

(c) *Who may file.* Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel (under 5 U.S.C. 1212(c)) may file a petition for review or cross petition for review. The Director of OPM may request review only if he or she believes that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under OPM's jurisdiction. 5 U.S.C. 7701(e)(2). All submissions to the Board must contain the signature of the party or of the party's designated representative.

(d) *Place for filing.* All pleadings described in paragraph (a) and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, by commercial or personal delivery, by facsimile, by mail, or by electronic filing in accordance with 1201.14 of this part.

(e) *Time for filing.* Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. For purposes of this section, the date that the petitioner receives the initial decision is determined according to the standard set forth at 1201.22(b)(3) of this part, pertaining to an appellant's receipt of a final agency decision. If the petitioner is represented, the 30-day time period begins to run upon receipt of the initial decision by either the representative or the petitioner, whichever comes first. A cross petition for review must be filed within 25 days of the date of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the date of service of the petition or cross petition. Any reply to a response to a petition for review must be filed within 10 days after the date of service of the response to the petition for review or cross petition for review.

(f) *Extension of time to file.* The Board will grant a motion for extension of time to file a pleading described in paragraph (a) only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must include a specific and detailed description of the circumstances alleged to constitute good cause, and it should be accompanied by any available documentation or other evidence supporting the matters asserted.

(g) *Late filings.* Any pleading described in paragraph (a) that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (f) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must include:

(1) The reasons for failing to request an extension before the deadline for the submission; and

(2) A specific and detailed description of the circumstances causing the late filing, accompanied by supporting documentation or other evidence.

Any response to the motion may be included in the response to the petition for review, the cross petition for review, or the response to the cross petition for review. The response will not extend the time provided by paragraph (e) of this section to file a cross petition for review or to respond to the petition or cross petition. In the absence of a motion, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing, or it may provide the party that submitted the document with an opportunity to show why it should not be dismissed or excluded as untimely.

(h) *Length limitations.* A petition for review, a cross petition for review, or a response to a petition or cross petition for review, whether computer generated, typed, or handwritten, is limited to 30 pages. A reply to a response to petition for review shall be limited to 15 pages. Computer generated and typed pleadings must use no less than 12 point typeface and 1-inch margins. The length limitation shall be exclusive of any table of contents, table of authorities, attachments, and certificate of service. A request for leave to file a pleading that exceeds the limitations prescribed in this paragraph must be received by the Clerk of the Board at least 3 days before the filing deadline. Such requests must give the reasons therefore as well as the desired length of the pleading, and are granted only in exceptional circumstances or if the Board in specific cases changes the length limitation.

(i) Redesignate paragraph (g) as paragraph (i).

(j) Redesignate paragraph (h) as paragraph (j)

(k) *Closing the record.* The record closes on expiration of the period for filing the reply to the response to the petition for review, or on expiration of the period for filing a response to the cross petition for review, whichever is

later, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

34. Revise § 1201.115 to read as follows:

§ 1201.115 Criteria for granting petition or cross petition for review.

The Board normally will consider only issues raised in a timely filed petition or cross petition for review. Situations in which the Board may grant a petition or cross petition for review include, but are not limited to, a showing that:

(a) The initial decision contains erroneous findings of material fact;

(1) Any alleged factual error must be material, meaning of sufficient weight to warrant an outcome different from that of the initial decision.

(2) A petitioner who alleges that the judge made erroneous findings of material fact must explain why the challenged factual determination is incorrect and identify specific evidence in the record that demonstrates the error. In reviewing a claim of an erroneous finding of fact, the Board will give deference to an administrative judge's credibility determinations when they are based, explicitly or implicitly, on the observation of the demeanor of witnesses testifying at a hearing.

(b) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The petitioner must explain how the error affected the outcome of the case;

(c) The judge's rulings during either the course of the appeal or the initial decision were not consistent with required procedures or involved an abuse of discretion, and the resulting error affected the outcome of the case;

(d) New and material evidence or legal argument is available that, despite the petitioner's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed.

(e) Notwithstanding the above provisions in this section, the Board reserves the authority to identify or reconsider any issue in an appeal before it.

35. Revise § 1201.116 to read as follows:

§ 1201.116 Compliance with orders for interim relief.

(a) *Certification of compliance.* If the appellant was the prevailing party in the initial decision, and the decision granted the appellant interim relief, any petition for review or cross petition for review filed by the agency must be accompanied by a certification that the agency has complied with the interim relief order either by providing the required interim relief or by satisfying the requirements of 5 U.S.C. 7701(b)(2)(A)(ii) and (B).

(b) *Challenge to certification.* If the appellant challenges the agency's certification of compliance with the interim relief order, the Board will issue an order affording the agency the opportunity to submit evidence of its compliance. The appellant may respond to the agency's submission of evidence within 10 days after the date of service of the submission.

(c) *Allegation of noncompliance in petition or cross petition for review.* If an appellant or an intervenor files a petition or cross petition for review of an initial decision ordering interim relief and such petition includes a challenge to the agency's compliance with the interim relief order, upon order of the Board the agency must submit evidence that it has provided the interim relief required or that it has satisfied the requirements of 5 U.S.C. 7701(b)(2)(A)(ii) and (B).

(d) *Request for dismissal for noncompliance with interim relief order.* If the agency files a petition for review or a cross petition for review and has not provided required interim relief, the appellant may request dismissal of the agency's petition. Any such request must be filed with the Clerk of the Board within 25 days of the date of service of the agency's petition. A copy of the response must be served on the agency at the same time it is filed with the Board. The agency may respond with evidence and argument to the appellant's request to dismiss within 15 days of the date of service of the request. If the appellant files a motion to dismiss beyond the time limit, the Board will dismiss the motion as untimely unless the appellant shows that it is based on information not readily available before the close of the time limit.

(e) *Effect of failure to show compliance with interim relief order.* Failure by an agency to provide the certification required by paragraph (a) of this section with its petition or cross petition for review, or to provide evidence of compliance in response to a Board order in accordance with paragraphs (b), (c), or (d) of this section, may result in the dismissal of the agency's petition or cross petition for review.

(f) *Back pay and attorney fees.* Nothing in this section shall be construed to require any payment of back pay for the period preceding the date of the judge's initial decision or attorney fees before the decision of the Board becomes final.

(g) *Allegations of noncompliance after a final decision is issued.* If the initial decision granted the appellant interim relief, but the appellant is not the prevailing party in the final Board order disposing of a petition for review, and the appellant believes that the agency has not provided full interim relief, the appellant may file an enforcement petition with the regional office under 1201.182 of this part. The appellant must file this petition within 20 days of learning of the agency's failure to provide full interim relief. If the appellant prevails in the final Board order disposing of a petition for review, then any interim relief enforcement motion filed will be treated as a motion for enforcement of the final decision. Petitions under this subsection will be processed under 1201.183 of this part.

36. In § 1201.117 revise subparagraph (a)(1) to read as follows:

§ 1201.117 Procedures for review or reopening.

(a) * * *

(1) Issue a decision that decides the case;

* * * * *

37. Revise § 1201.118 to read as follows:

§ 1201.118 Board reopening of final decisions.

Regardless of any other provision of this part, the Board may at any time reopen any appeal in which it has issued a final order or in which an initial decision has become the Board's final decision by operation of law. The Board will exercise its discretion to reopen an appeal only in unusual or extraordinary circumstances, and generally within a short period of time after the decision becomes final.

§ 1201.119 [Amended]

38. In § 1201.119(a), (b) and (d) remove the words ''final order'' and add, in their place, the words ''final decision''.

39. In § 1201.122 revise paragraph (b) and delete paragraphs (d) and (e) of as follows:

§ 1201.122 Filing complaint; serving documents on parties.

(a) * * *

(b) Initial filing and service. The Special Counsel must file a copy of the

complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The Special Counsel must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service.

(c) * * *

40. In § 1201.128 revise paragraph (b) and delete paragraphs (d) and (e) as follows:

§ 1201.128 Filing complaint; serving documents on parties.

(a) * * *

(b) Initial filing and service. The Special Counsel must file a copy of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative, and each person on whose behalf the corrective action is brought.

(c) * * *

41. In § 1201.134 revise paragraph (d) and delete paragraphs (f) and (g) as follows:

§ 1201.134 Deciding official; filing stay request; serving documents on parties.

* * * * *

(d) *Initial filing and service.* The Special Counsel must file a copy of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The Special Counsel must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(e) * * *

42. In § 1201.137 revise paragraph (c) and delete paragraphs (e) and (f) as follows:

§ 1201.137 Covered actions; filing complaint; serving documents on parties.

* * * * *

(c) Initial filing and service. The agency must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party's representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The agency must serve a copy of the complaint on each party or the party's representative, as shown on the certificate of service.

(d) * * *

43. Revise § 1201.142 to read as follows:

§ 1201.142 Actions filed by administrative law judges.

An administrative law judge who alleges a constructive removal or other action by an agency in violation of 5 U.S.C. 7521 may file a complaint with the Board under this subpart. The filing and serving requirements of 1201.137 of this part apply. Such complaints shall be adjudicated in the same manner as agency complaints under this subpart.

44. In § 1201.143 revise paragraph (c) and delete paragraphs (e) and (f) as follows:

§ 1201.143 Right to hearing; filing complaint; serving documents on parties.

* * * * *

(c) Initial filing and service. The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(d) * * *

45. In § 1201.153 revise subparagraph (a)(2) as follows:

§ 1201.153 Contents of appeal.

(a) * * *

(1) * * *

(2) The appeal must state whether the appellant has filed a grievance under a negotiated grievance procedure or a formal discrimination complaint with any agency regarding the matter being appealed to the Board. If he or she has done so, the appeal must state the date on which the appellant filed the complaint or grievance, and it must describe any action that the agency took in response to the complaint or grievance.

* * * * *

46. In § 1201.154 revise the introductory paragraph as follows:

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

For purposes of this section, the date an appellant receives the agency's decision is determined according to the standard set forth at 1201.22(b)(3) of this part. Appellants who file appeals raising issues of prohibited discrimination in connection with a matter otherwise appealable to the Board must comply with the following time limits:

(a) * * *

* * * * *

47. Revise § 1201.155 to read as follows:

§ 1201.155 Requests for review of arbitrators' decisions.

(a) *Source and applicability.* (1) Under paragraph (d) of 5 U.S.C. 7121, an employee who believes he or she has been subjected to discrimination within the meaning of 5 U.S.C. 2302(b)(1), and who may raise the matter under either a statutory procedure such as 5 U.S.C. 7701 or under a negotiated grievance procedure, must make an election between the two procedures. The election of the negotiated grievance procedure ''in no manner prejudices'' the employee's right to request Board review of the final decision pursuant to 5 U.S.C. 7702. Subsection (a)(1) of section 7702 provides that, ''[n]otwithstanding any other provision of law,'' when an employee who has been subjected to an action that is appealable to the Board and who alleges that the action was the result of discrimination within the meaning of 5 U.S.C. 2302(b)(1), the Board will decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701.

(2) This section does not apply to employees of the Postal Service or to other employees excluded from the coverage of the federal labor management laws at Chapter 71 of title 5, United States Code.

(b) *Scope of Board Review.* If the negotiated grievance procedure permits allegations of discrimination, the Board will review only those claims of discrimination that were raised in the negotiated grievance procedure. If the negotiated grievance procedure does not permit allegations of discrimination to be raised, the appellant may raise such claims before the Board.

(c) *Contents.* The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

(1) A statement of the grounds on which review is requested;

(2) References to evidence of record or rulings related to the issues before the Board;

(3) Arguments in support of the stated grounds that refer specifically to relevant documents, and that include relevant citations of authority; and

(4) Legible copies of the final grievance or arbitration decision, the

agency decision to take the action, and other relevant documents. Those documents may include a transcript or recording of the hearing.

(d) *Development of the Record.* The Board, in its discretion, may develop the record as to a claim of prohibited discrimination by ordering the parties to submit additional evidence or forwarding the request for review to a judge to conduct a hearing.

(e) *Closing of the Record.* The record will close upon expiration of the period for filing the response to the request for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

48. Revise § 1201.181 to read as follows:

§ 1201.181 Authority and explanation.

(a) *Authority.* Under 5 U.S.C. 1204(a)(2), the Board has the authority to order any Federal agency or employee to comply with decisions and orders issued under its jurisdiction, and the authority to enforce compliance with its orders and decisions. The Board's decisions and orders, when appropriate, will contain a notice of the Board's enforcement authority.

(b) *Requirements for parties.* The parties are expected to cooperate fully with each other so that compliance with the Board's orders and decisions can be accomplished promptly and in accordance with the laws, rules, and regulations that apply to individual cases. Agencies must promptly inform an appellant of actions taken to comply and must inform the appellant when it believes compliance is complete. Appellants must provide agencies with all information necessary for compliance and should monitor the agency's progress towards compliance.

49. In § 1201.182 revise paragraphs (a) and (b) as follows:

§ 1201.182 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision or order issued under the Board's appellate jurisdiction, or for enforcement of the terms of a settlement agreement that has been entered into the record for the purpose of enforcement in an order or decision under the Board's appellate jurisdiction. The petition must be filed promptly with the regional or field office that issued the initial decision; a copy of it must be served on the other party or that party's representative; and it must describe specifically the reasons the petitioning party believes there is noncompliance. The petition also must include the date and results of any communications regarding compliance. Any petition for enforcement that is filed more than 30 days after the date of service of the agency's notice that it has complied must contain a statement and evidence showing good cause for the delay and a request for an extension of time for filing the petition.

(b) *Original jurisdiction.* Any party seeking enforcement of a final Board decision or order issued under its original jurisdiction or enforcement of the terms of settlement agreement entered into the record for the purpose of enforcement in an order or decision issued under its original jurisdiction must file a petition for enforcement with the Clerk of the Board and must serve a copy of that petition on the other party or that party's representative. The petition must describe specifically the reasons why the petitioning party believes there is noncompliance.

* * * * *

50. In § 1201.183 revise paragraphs (a)(2) and (a)(5) through (a)(7), (b)(1), (b)(2), and (c), and redesignate paragraphs (c) and (d) as (d) and (e) as follows:

§ 1201.183 Procedures for processing petitions for enforcement.

(a) *Initial Processing.* (1) * * *

(2) If the agency is the alleged noncomplying party, it shall submit the name, title, grade, and address of the agency official charged with complying with the Board's order, and inform such official in writing of the potential sanction for noncompliance as set forth in 5 U.S.C. 1204(a)(2) and (e)(2)(A), even if the agency asserts it has fully complied. The agency must advise the Board of any change to the identity or location of this official during the pendency of any compliance proceeding. In the absence of this information, the Board will presume that the highest ranking appropriate agency official who is not appointed by the President by and with the consent of the Senate is charged with compliance.

* * * * *

(5) If the judge finds that the alleged noncomplying party has not taken all actions required to be in full compliance with the final decision, the judge will issue an initial decision resolving all issues raised in the petition for enforcement, and identifying the specific actions the noncomplying party must take to be in compliance with the Board's final decision. A copy of the initial decision will be served on the responsible agency official.

(6) If an initial decision described under paragraph (a)(5) of this section is issued, the party found to be in noncompliance must do the following:

(i) To the extent that the party decides to take the actions required by the initial decision, the party must submit to the Clerk of the Board, within the time limit for filing a petition for review under section 1201.114(e) of this part, a statement that the party has taken the actions identified in the initial decision, along with evidence establishing that the party has taken those actions. The narrative statement must explain in detail why the evidence of compliance satisfies the requirements set forth in the initial decision.

(ii) To the extent that the party decides not to take all of the actions required by the initial decision, the party must file a petition for review under the provisions of sections 1201.114 and 1201.115 of this part.

(iii) The responses required by the preceding two paragraphs may be filed separately or as a single pleading.

If the agency is the party found to be in noncompliance, it must advise the Board, as part of any submission under this paragraph, of any change in the identity or location of the official responsible for compliance previously provided pursuant to paragraph (a)(2).

(7) The petitioner may file evidence and argument in response to any submission described in paragraph (a)(6) by filing opposing evidence and argument with the Clerk of the Board within 20 days of the date such submission is filed.

(b) *Consideration by the Board.* (1) Following review of the initial decision and the written submissions of the parties, the Board will render a final decision on the issues of compliance. Upon finding that the agency is in noncompliance, the Board may, when appropriate, require the agency and the responsible agency official to appear before the Board to show why sanctions should not be imposed under 5 U.S.C. 1204(a)(2) and 1204(e)(2)(A). The Board also may require the agency and the responsible agency official to make this showing in writing, or to make it both personally and in writing. The responsible agency official has the right to respond in writing or to appear at any argument concerning the withholding of that official's pay.

(2) The Board's final decision on the issues of compliance is subject to judicial review under § 1201.120 of this part.

(3) * * *

(c) *Burdens of proof.* If an appellant files a petition for enforcement seeking compliance with a Board order, the agency generally has the burden to prove its compliance with the Board order by a preponderance of the evidence. However, if any party files a petition for enforcement seeking compliance with the terms of a settlement agreement, that party has the burden of proving the other party's breach of the settlement agreement by a preponderance of the evidence.

(d) Redesignate paragraph (c) as paragraph (d).

(e) Redesignate paragraph (d) as paragraph (e).

51. Revise the heading of Subpart H of part 1201 to read as follows:

Subpart H—Attorney Fees (Plus Costs, Expert Witness Fees, and Litigation Expenses, Where Applicable), and Damages (Consequential, Liquidated, and Compensatory)

52. In § 1201.201 revise paragraph (a) and add a new paragraph (e) as follows:

§ 1201.201 Statement of purpose.

(a) This subpart governs Board proceedings for awards of attorney fees (plus costs, expert witness fees, and litigation expenses, where applicable), consequential damages, compensatory damages, and liquidated damages.

* * * * *

(e) An award equal to back pay shall be awarded as liquidated damages under 5 U.S.C. 3330c when the Board or a court determines an agency willfully violated an individual's veterans' preference rights.

53. In § 1201.202 insert a new paragraph (d) and redesignate existing paragraph (d) as paragraph (e).

§ 1201.202 Authority for awards.

* * * * *

(d) *Awards of liquidated damages.* The Board may award an amount equal to back pay as liquidated damages under 5 U.S.C. 3330c when it determines that an agency willfully violated an appellant's veterans' preference rights.

(e) Redesignate paragraph (d) as paragraph (e)

§ 1201.204 [Amended]

54. In § 1201.204 remove the words ''consequential damages or compensatory damages'' and add, in their place, the words ''consequential, liquidated, or compensatory damages.''

55. Amend § 1201.204 by revising paragraph (h) to read as follows:

§ 1201.204 Proceedings for consequential, liquidated, and compensatory damages.

* * * * *

(h) Request for damages first made in proceeding before the Board. Where a request for consequential, liquidated, or compensatory damages is first made on petition for review of a judge's initial decision on the merits and the Board waives the time limit for making the request in accordance with paragraph (a)(2) of this section, or where the request is made in a case where the only MSPB proceeding is before the Board, including, for compensatory damages only, a request to review an arbitration decision under 5 U.S.C. 7121(d), the Board may:

(1) * * *

* * * * *

56. Remove and reserve Appendix III to Part 1201.

Appendix III to Part 1201 [Reserved]

PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

57. The authority citation for 5 CFR part 1203 continues to read as follows:

Authority: 5 U.S.C. 1204(A), 1204(f), and 1204(h).

58. In § 1203.2 revise paragraph (e) to read as follows:

§ 1203.2 Definitions.

* * * * *

(e) Prohibited personnel practices are the impermissible actions described in 5 U.S.C. 2302(b)(1) through 2302(b)(12).

* * * * *

PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVISES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT

59. The authority citation for 5 CFR part 1208 continues to read as follows:

Authority: 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

60. Revise § 1208.3 to read as follows:

§ 1208.3 Application of 5 CFR part 1201.

Except as expressly provided in this part, the Board will apply subparts A (Jurisdiction and Definitions), B (Procedures for Appellate Cases), C (Petitions for Review of Initial Decisions), and F (Enforcement of Final Decisions and Orders) of 5 CFR part 1201 to appeals governed by this part. The Board will apply the provisions of subpart H (Attorney Fees (Plus Costs, Expert Witness Fees, and Litigation Expenses, Where Applicable), and Damages (Consequential, Liquidated, and Compensatory)) of 5 CFR part 1201 regarding awards of attorney fees and liquidated damages to appeals governed by this part.

61. Revise § 1208.21 to read as follows:

§ 1208.21 VEOA exhaustion requirement.

(a) *General rule.* Before an appellant may file a VEOA appeal with the Board, the appellant must first file a complaint under 5 U.S.C. 3330a(a) with the Secretary of Labor within 60 days after the date of the alleged violation. In addition, either the Secretary must have sent the appellant written notification that efforts to resolve the complaint were unsuccessful or, if the Secretary has not issued such notification and at least 60 days have elapsed from the date the complaint is filed, the appellant must have provided written notification to the Secretary of the appellant's intention to file an appeal with the Board.

(b) *Equitable tolling; extension of filing deadline.* In extraordinary circumstances, the appellant's 60-day deadline for filing a complaint with the Secretary is subject to the doctrine of equitable tolling, which permits the Board to extend the deadline where the appellant, despite having diligently pursued his or her rights, was unable to make a timely filing. Examples include cases involving deception or in which the appellant filed a defective pleading during the statutory period.

62. Amend § 1208.22 by adding a new paragraph (c) as follows:

§ 1208.22 Time of filing.

* * * * *

(c) *Equitable tolling; extension of filing deadline.* In extraordinary circumstances, the appellant's 60-day deadline for filing an appeal with the MSPB is subject to the doctrine of equitable tolling, which permits the Board to extend the deadline where the appellant, despite having diligently pursued his or her rights, was unable to make a timely filing. Examples include cases involving deception or in which the appellant filed a defective pleading during the statutory period.

63. In § 1208.23 revise subparagraph (a)(5) and redesignate paragraph (a)(5) as paragraph (a)(6) as follows:

§ 1208.23 Content of a VEOA appeal; request for hearing.

(a) * * *

(1) * * *

* * * * * *

(5) Evidence identifying the specific veterans' preference claims that the appellant raised before the Secretary; and

(6) Redesignate paragraph (a)(5) as paragraph (a)(6).

* * * * *

PART 1209—PRACTICES AND PROCEDURES FOR APPEALS AND STAY REQUESTS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING

64. The authority citation for 5 CFR part 1208 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

65. Revise paragraph of § 1209.2 to read as follows:

§ 1209.2 Jurisdiction.

(a) Under 5 U.S.C. 1221(a), an employee, former employee, or applicant for employment may appeal to the Board from agency personnel actions alleged to have been threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities.

(b) The Board exercises jurisdiction over:

(1*) Individual right of action (IRA) appeals.* These are authorized by 5 U.S.C. 1221(a) with respect to personnel actions listed in 1209.4(a) of this part that are allegedly threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities. If the action is not otherwise directly appealable to the Board, the appellant must seek corrective action from the Special Counsel before appealing to the Board.

Example 1: Agency A gives Mr. X a performance evaluation under 5 U.S.C. chapter 43 that rates him as ''minimally satisfactory.'' Mr. X believes that the agency has rated him ''minimally satisfactory'' because he reported that his supervisor embezzled public funds in violation of federal law and regulation. Because a performance evaluation is not an otherwise appealable action, Mr. X must seek corrective action from the Special Counsel before appealing to the Board or before seeking a stay of the evaluation. If Mr. X appeals the evaluation to the Board after the Special Counsel proceeding is terminated or exhausted, his appeal is an IRA appeal.

Example 2: As above, Agency A gives Mr. X a performance evaluation under 5 U.S.C. chapter 43 that rates him as ''minimally satisfactory.'' Mr. X believes that the agency has rated him ''minimally satisfactory'' because he previously filed a Board appeal of the agency's action suspending him without pay for 15 days, and because he testified on behalf of a co-worker in an EEO proceeding. The Board would not have jurisdiction over the performance evaluation as an IRA appeal because the appellant has not made an allegation of a violation of 5 U.S.C. 2302(b)(8), i.e., a claim of retaliation for a protected whistleblowing disclosure. Retaliation for filing a Board appeal would constitute a different prohibited personnel practice, 5 U.S.C. 2302(b)(9), retaliation for having exercised an appeal, complaint, or grievance right granted by any law, rule, or regulation. Similarly, retaliation for protected EEO activity is a prohibited personnel practice under subsection (b)(9), not under subsection (b)(8).

Example 3: Citing alleged misconduct, an agency proposes Employee Y's removal. While that removal action is pending, Y files a complaint with OSC alleging that the proposed removal was initiated in retaliation for her having disclosed that an agency official embezzled public funds in violation of federal law and regulation. OSC subsequently issues a letter notifying Y that it has terminated its investigation of the alleged retaliation with respect to the proposed removal. Employee Y may file an IRA appeal with respect to the proposed removal.

(2) *Otherwise appealable action appeals.* These are appeals to the Board under laws, rules, or regulations other than 5 U.S.C. 1221(a) that include an allegation that the action was based on the appellant's whistleblowing activities. (Examples of such otherwise appealable actions are listed in 5 CFR 1201.3(a).) An individual who has been subjected to an otherwise appealable action must make an election of remedies as described in 5 U.S.C. 7121(g) and paragraphs (c) and (d) of this section.

Example 4: Same as Example 3 above. While the OSC complaint with respect to the proposed removal is pending, the agency effects the removal action. OSC subsequently issues a letter notifying Y that it has terminated its investigation of the alleged retaliation with respect to the proposed removal. With respect to the effected removal, Employee Y can elect to appeal that action directly to the Board, or to proceed with a complaint to OSC. If she chooses the latter option, she may file an IRA appeal when OSC has terminated its investigation, but the only issue that will be adjudicated in that appeal is whether she proves that her protected disclosure was a contributing factor in the removal action and, if so, whether the agency can prove by clear and convincing evidence that it would have removed Y in the absence of the protected disclosure. If she instead files a direct appeal, the agency must prove its misconduct charges, nexus, and the reasonableness of the penalty, and Y can raise any affirmative defenses she might have.

(3) * * *

(c) *Issues before the Board in IRA appeals.* In an individual right of action appeal, the only merits issues before the Board are those listed in 5 U.S.C. 1221(e), i.e., whether the appellant has demonstrated that one or more whistleblowing disclosures was a contributing factor in one or more covered personnel actions and, if so, whether the agency has demonstrated by clear and convincing evidence that it would have taken the same personnel action(s) in the absence of the protected disclosure(s). The appellant may not raise affirmative defenses other than reprisal for whistleblowing activities, such as claims of discrimination or harmful procedural error. In an IRA appeal that concerns an adverse action under 5 U.S.C. 7512, the agency need not prove its charges, nexus, or the reasonableness of the penalty, as a requirement under 5 U.S.C. 7513(a), i.e., that its action is taken ''only for such cause as will promote the efficiency of the service.'' However, the Board may consider the strength of the agency's evidence in support of its adverse action in determining whether the agency has demonstrated by clear and convincing evidence that it would have taken the same personnel action in the absence of the protected disclosure(s).

(d) *Elections under 5 U.S.C. 7121(g).* (1) Under 5 U.S.C. 7121(g)(3), an employee who believes he or she was subjected to a covered personnel action in retaliation for protected whistleblowing ''may elect not more than one'' of 3 remedies: (A) an appeal to the Board under 5 U.S.C. 7701; (B) a negotiated grievance under 5 U.S.C. 7121(d); or (C) corrective action under subchapters II and III of 5 U.S.C. chapter 12, i.e., a complaint filed with the special counsel (5 U.S.C. 1214), which can be followed by an IRA appeal filed with the Board (5 U.S.C. 1221). Under 5 U.S.C. 7121(g)(4), an election is deemed to have been made based on which of the 3 actions the individual files first.

(2) In the case of an otherwise appealable action as described in paragraph (b)(2) of this section, an employee who files a complaint with OSC prior to filing an appeal with the Board has elected corrective action under subchapters II and III of 5 U.S.C. chapter 12, i.e., a complaint filed with OSC, which can be followed by an IRA appeal with the Board. As described in paragraph (c) of this section, the IRA appeal in such a case is limited to resolving the claim(s) of reprisal for whistleblowing activities.

66. In § 1209.4 revise paragraph (b) as follows:

§ 1209.4 Definitions.

* * * * *

(b) *Whistleblowing* is the making of a protected disclosure, that is, a disclosure of information by an employee, former employee, or applicant that the individual reasonably believes evidences a violation of law, rule, or regulation, gross

mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. It does not include a disclosure that is specifically prohibited by law or required by Executive order to be kept secret in the interest of national defense or foreign affairs, unless such information is disclosed to the Special Counsel, the Inspector General of an agency, or an employee designated by the head of the agency to receive it.

* * * * *

67. In § 1209.5 revise paragraphs (a) and (b) as follows:

§ 1209.5 Time of filing.

(a) *General rule.* The appellant must seek corrective action from the Special Counsel before appealing to the Board unless the action being appealed is otherwise appealable directly to the Board and the appellant has elected a direct appeal. (See § 1209.2(d) regarding election of remedies under 5 U.S.C. 7121(g)). Where the appellant has sought corrective action, the time limit for filing an appeal with the Board is governed by 5 U.S.C. 1214(a)(3). Under that section, an appeal must be filed:

(1) No later than 65 days after the date of issuance of the Special Counsel's written notification to the appellant that it was terminating its investigation of the appellant's allegations or, if the appellant shows that the Special Counsel's notification was received more than 5 days after the date of issuance, within 60 days after the date the appellant received the Special Counsel's notification; or

(2) At any time after the expiration of 120 days, if the Special Counsel has not notified the appellant that it will seek corrective action on the appellant's behalf within 120 days of the date of filing of the request for corrective action.

(b) *Equitable tolling; extension of filing deadline.* The appellant's deadline for filing an individual right of action appeal with the Board after receiving written notification from the Special Counsel that it was terminating its investigation of his or her allegations is subject to the doctrine of equitable tolling, which permits the Board to extend the deadline where the appellant, despite having diligently pursued his or her rights, was unable to make a timely filing. Examples include cases involving deception or in which the appellant filed a defective pleading during the statutory period.

(c) * * *

68. In § 1209.6 revise paragraph (b) to read as follows:

§ 1209.6 Content of appeal; right to hearing.

* * * * *

(b) *Right to hearing.* An appellant generally has a right to a hearing if the appeal has been timely filed and the Board has jurisdiction over the appeal.

* * * * *

William D. Spencer,

Clerk of the Board.

[FR Doc. 2012–13655 Filed 6–6–12; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0114]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/U.S. Customs and Border Protection—017 Analytical Framework for Intelligence (AFI) System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before July 9, 2012.

ADDRESSES: You may submit comments, identified by docket number DHS–2012–0114, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–325–0280), CBP Privacy Officer, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 Ninth Street NW., Washington, DC 20229. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) proposes to establish a new DHS system of records titled, ''DHS/U.S. Customs and Border Protection, DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records.''

AFI enhances DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk; and aids in the enforcement of customs and immigration laws, and other laws enforced by DHS at the border. AFI is used for the purposes of: (1) Identifying individuals, associations, or relationships that may pose a potential law enforcement or security risk, targeting cargo that may present a threat, and assisting intelligence product users in the field in preventing the illegal entry of people and goods, or identifying other violations of law; (2) conducting additional research on persons and/or cargo to understand whether there are patterns or trends that could assist in the identification of potential law enforcement or security risks; and (3) sharing finished intelligence products developed in connection with the above purposes with DHS employees who have a need to know in the performance of their official duties and who have appropriate clearances or permissions. Finished intelligence products are tactical, operational, and strategic law enforcement intelligence products that have been reviewed and approved for sharing with finished intelligence product users and authorities outside of DHS, pursuant to routine uses.

To support its capability to query, efficiently, multiple data sources, AFI creates and maintains an index, which is a portion of the necessary and relevant data in existing operational

DHS source systems, by ingesting this data through and from the Automated Targeting System (ATS) and those source systems. In addition to the index, AFI provides AFI analysts with different tools that assist in detecting trends, patterns, and emerging threats, and in identifying non-obvious relationships.

AFI improves the efficiency and effectiveness of CBP's research and analysis process by providing a platform for the research, collaboration, approval, and publication of finished intelligence products.

AFI provides a platform for preparing responses to requests for information (RFIs). AFI will centrally maintain the requests, the research based on those requests, and the response to those requests. AFI allows analysts to perform federated queries against external data sources, including the Department of State, the Department of Justice/FBI, as well as publicly and commercially available data sources and, eventually, classified data. AFI also enables an authorized user to search the Internet for additional information that may contribute to an intelligence gathering and analysis effort. AFI facilitates the sharing of finished intelligence products within DHS and tracks sharing outside of DHS.

Two principal types of users will access AFI: DHS analysts and DHS finished intelligence product users. Analysts will use the system to obtain a more comprehensive view of data available to CBP, and then analyze and interpret that data using the visualization and collaboration tools accessible in AFI. If an analyst finds actionable terrorist, law enforcement, or intelligence information, he may use relevant information to produce a report, create an alert, or take some other appropriate action within DHS's mission and authorities. In addition to using AFI as a workspace to analyze and interpret data, analysts may submit or respond to RFIs, assign tasks, or create finished intelligence products based on their research or in response to an RFI. Finished intelligence product users are officers, agents, and employees of DHS who have been determined to have a need to know in the performance of their official duties and who have appropriate clearances or permissions. Finished intelligence product users will have more limited access to AFI, will not have access to the research space or tools, and will only view finished intelligence products that analysts published in AFI. Finished intelligence product users are not able to query the data from the source systems through AFI.

AFI performs extensive auditing that records the search activities of all users to mitigate any risk of authorized users conducting searches for inappropriate purposes. AFI also requires that analysts re-certify annually any user-provided information marked as containing PII to ensure its continued relevance and accuracy. Analysts will be prompted to re-certify any documents that maintain PII which are not related to a finished intelligence product. Information that is not re-certified is automatically purged from AFI. Account access is controlled by AFI passing individual user credentials to the originating system or through a previously approved certification process in another system in order to minimize the risk of unauthorized access. When an analyst conducts a search for products, AFI will only display those results that an individual user has permission to view.

Consistent with DHS's information sharing mission, information stored in AFI may be shared consistent with the Privacy Act, including in accordance with the routine uses, and applicable laws as described below including sharing with other DHS components and appropriate federal, state, local, tribal, territorial, foreign, multilateral, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information and the information will be used consistent with the Privacy Act, including the routine uses set forth in the SORN, in order to carry out national security, law enforcement, customs, immigration, intelligence, or other authorized functions.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records. Some information in AFI relates to official DHS national security, law enforcement, and immigration activities. The exemptions are required to preclude subjects from compromising an ongoing law enforcement, national security or fraud investigation; to avoid disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; and to ensure DHS's ability to obtain information from third parties and other sources.

Pursuant to 5 U.S.C. 552a(j)(2), this system is exempted from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); (f); and (g). Additionally, pursuant to 5 U.S.C. 552a(k)(1) and (2) this system is exempted from the following provisions of the Privacy Act: 5 U.S.C 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f). Many of the functions in this system require retrieving records from law enforcement systems. Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions in accordance with this rule.

The exemptions proposed here are standard for agencies where the information may contain investigatory materials compiled for law enforcement purposes. These exemptions are exercised by executive federal agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

A notice of system of records for DHS/CBP—017 Analytical Framework for Intelligence (AFI) is also published in this issue of the **Federal Register**.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all persons, regardless of citizenship, where a system of records maintains information on both U.S. citizens and lawful permanent residents, as well as visitors.

The Privacy Act allows government agencies to exempt systems of records from certain provisions of the Act. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking and a Final Rule to make clear to the public the reasons why a particular exemption is claimed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph ''68'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

68. The DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records is a repository of information held by DHS to enhance DHS's ability to: identify, apprehend, and/or prosecute individuals who pose a potential law enforcement or security risk; aid in the enforcement of the customs and immigration laws, and other laws enforced by DHS at the border; and enhance United States security. This system also supports certain other DHS programs whose functions include, but are not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from certain provisions of the Privacy Act as follows:

- Pursuant to 5 U.S.C. 552a(j)(2), the system is exempt from 5 U.S.C. 552a(c)(3) and (c)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).
- Pursuant to 5 U.S.C. 552a(j)(2), the system (except for any records that were ingested by AFI where the source system of records already provides access and/or amendment under the Privacy Act) is exempt from 5 U.S.C. 552a(d)(1), (d)(2), (d)(3), and (d)(4).
- Pursuant to 5 U.S.C. 552a(k)(1), the system is exempt from 5 U.S.C. 552a(c)(3); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).
- Pursuant to 5 U.S.C. 552a(k)(1), the system is exempt from (d)(1), (d)(2), (d)(3), and (d)(4).
- Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).
- Pursuant to 5 U.S.C. 552a(k)(2), the system (except for any records that were ingested by AFI where the source system of records already provides access and/or amendment under the Privacy Act) is exempt from (d)(1), (d)(2), (d)(3), and (d)(4).

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement and national security, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement and national security activities.

(e) From subsection (e)(3) (Notice to Individuals) because providing such detailed information could impede law enforcement and national security by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: June 4, 2012.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–13815 Filed 6–6–12; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0365; Airspace Docket No. 12–ASO–22]

Proposed Establishment of Class E Airspace; Arcadia, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Arcadia, FL, to accommodate the Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Arcadia Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 23, 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.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2012–0365; Airspace Docket No. 12–ASO–22, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2012–0365; Airspace Docket No. 12–ASO–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–0365; Airspace Docket No. 12–ASO–22.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Arcadia, FL, providing the controlled airspace required to support the RNAV GPS standard instrument approach procedures for Arcadia Municipal Airport. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

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 designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed 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 proposed regulation is within the scope of that authority as it would establish Class E airspace at Arcadia Municipal Airport, Arcadia, FL.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 FL E5 Arcadia, FL [New]

Arcadia Municipal Airport, FL

(Lat. 27°11′31″ N., long. 81°50′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arcadia Municipal Airport.

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

Michael D. Wagner,

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

[FR Doc. 2012–13838 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0289; Airspace Docket No. 12–ANM–5]

Proposed Establishment of Class E Airspace; Fort Morgan, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Fort Morgan, CO. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedure at Fort Morgan Municipal Airport, Fort Morgan, CO. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 23, 2012.

ADDRESSES: Send comments on this proposal 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; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0289; Airspace Docket No. 12–ANM–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0289 and Airspace Docket No. 12–ANM–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0289 and Airspace Docket No. 12–ANM–5''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Fort Morgan Municipal Airport, Fort Morgan, CO. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedure at Fort Morgan Municipal Airport. This action would enhance the safety and management of aircraft operations at the airport.

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 designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 this proposed rule, when promulgated, would 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 for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Fort Morgan Municipal Airport, Fort Morgan, CO.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 of the earth.

* * * * *

ANM CO E5 Fort Morgan, CO [New]

Fort Morgan Municipal Airport, CO
(Lat. 40°20′02″ N., Long. 103°48′15″ W.)

That airspace extending upward from 700 feet above the surface within 7.5-mile radius of the Fort Morgan Municipal Airport.

Issued in Seattle, Washington, on May 30, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–13842 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, and 774

[Docket No. 120201082–2132–01]

RIN 0694–AF58

Revisions to the Export Administration Regulations (EAR): Control of Personal Protective Equipment, Shelters, and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how articles the President determines no longer warrant export control under Category X (Protective Personnel Equipment and Shelters) of the United States Munitions List (USML), would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 1A613, 1B613, 1D613, and 1E613. In conjunction with establishing these new ECCNs, this proposed rule would control military helmets (currently controlled under ECCNs 0A018 and 0A988) under new ECCN 1A613 and amend ECCN 1A005 for body armor. This proposed rule also would remove machetes from ECCN 0A988. This is one in a planned series of proposed rules describing how various types of articles the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant USML control, would be controlled on the CCL and by the EAR. This proposed rule is being published in conjunction with a proposed rule of the Department of State, Directorate of Defense Trade Controls (DDTC), which would amend the list of articles controlled by USML Category X in the International Traffic In Arms Regulations (ITAR).

DATES: Comments must be received by July 23, 2012.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. The identification number for this rulemaking is BIS–2012–0019.
- By email directly to *publiccomments@bis.doc.gov*. Include RIN 0694–AF58 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF58.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–6105, Email: *Michael.Rithmire@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (herein ''the July 15 proposed rule'') that set forth a framework for how articles, which the President determines in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)) would no longer warrant export control on the United States Munitions List (USML) of the ITAR, would be controlled on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR). On November 7, 2011 (76 FR 68675) (herein ''the November 7 proposed rule''), BIS published a rule proposing several changes to the framework initially proposed in the July 15 rule.

Following the structure of the July 15 proposed rule, this proposed rule describes BIS's proposal for controlling under the EAR and its CCL personal protective equipment, shelters, and related articles now controlled by the ITAR's USML Category X. The proposed changes described in this proposed rule and the State Department's proposed amendment to Category X of the USML are based on a review of Category X by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category X in the ITAR that are either (i) inherently military and otherwise warrant export control on the USML or (ii) if it is a type common to non-military protective equipment, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and that are almost exclusively available from the United States. If an article satisfied one or both of those criteria, the article remained on the USML in the ITAR. If an article did not satisfy either standard but was nonetheless a type of article that is, as a result of differences in form and fit, ''specially designed'' for military

applications, it was identified in the new ECCNs proposed in this notice. The licensing requirements and other EAR-specific controls for such items also described in this notice would enhance national security, permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1). This proposed rule describes how certain protective equipment and related articles in USML Category X would be controlled by the EAR and its CCL if the President determines that the articles no longer warrant export control on the USML.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that would be removed from the USML, or that are items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that are already controlled elsewhere on the CCL. The proposed rule referred to this series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

This proposed rule would create four such ECCNs—1A613, to control armored and protective ''equipment,'' constructions, and ''components;'' 1B613, to control test, inspection, and ''production'' equipment, and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities controlled by ECCN 1A613 or USML Category X and not identified in USML Category X; 1D613, to control ''software'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCNs 1A613 or 1B613; and 1E613, to control ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCNs 1A613, 1B613, or 1D613.

This proposed rule also would revise three existing ECCNs—0A018, certain items on the Wassenaar Arrangement Munitions List; 0A988, conventional military steel helmets and machetes; and 1A005, body armor and specially designed components not manufactured to military standards or specifications. Further, this rule would revise License Exceptions Baggage (BAG) and Temporary Imports, Exports, and Reexports (TMP) to authorize exports of certain body armor classified under new ECCN 1A613.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant export control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Detailed Description of Changes Proposed by This Rule

Proposed ECCN 1A613: Armored and Protective ''Equipment,'' Constructions, and Components

Proposed ECCN 1A613 would impose national security (NS Column 1), regional stability (RS Column 1), and antiterrorism (AT Column 1) controls on commodities described herein. Paragraph .a of ECCN 1A613 would control armored plate ''specially designed'' for military use and not controlled by the USML. Paragraph .b would control shelters ''specially designed'' to provide ballistic protection or protect against nuclear, biological, or chemical contamination. Paragraph .c would control military helmets providing protection less than NIJ level IV (currently classified under ECCN 0A018.d) and helmet shells providing protection less than NIJ level IV. Paragraph .d would control soft body armor and protective garments manufactured to military standards or specifications that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008) as well as hard body armor plate that provides NIJ level III protection. Body armor currently classified under ECCN 1A005 would not be reclassified under this ECCN, as discussed below. Paragraph .e would control other personal protective equipment, such as handheld ballistic shields, ''specially designed'' for military applications not specified in the USML or CCL. Paragraphs .f through .w would be reserved for future use. Paragraph .x would control ''parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity controlled by proposed ECCN 1A613 and not specified elsewhere in the CCL or USML. Paragraph .y would control specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity controlled under proposed ECCN 1A613 and not elsewhere specified in the CCL. This proposed rule would control conventional military steel helmets, currently classified under ECCN 0A988, under paragraph .y.1. Paragraphs .y.2 through .y.98 would be reserved for future classification of specific equipment.

BIS proposed to move anti-gravity suits, pressure suits, and atmosphere diving suits, currently controlled in the USML under Category X(a)(3), (a)(4), and (a)(5), respectively, to ECCN 9A610 in the November 7 proposed rule.

Proposed ECCN 1B613: Test, Inspection, and ''Production'' ''Equipment'' and Related Commodities ''Specially Designed'' for the ''Development'' or ''Production'' of Commodities Controlled by ECCN 1A613 or USML Category X

Proposed ECCN 1B613 would impose national security (NS Column 1), regional stability (RS Column 1), and antiterrorism (AT Column 1) controls on commodities described herein. Paragraph .a of ECCN 1B613 would control test, inspection, and ''production'' ''equipment'' that is not specified in USML Category X(c) and is ''specially designed'' for the ''production'' or ''development'' of commodities specified in proposed ECCN 1A613 or USML Category X. Paragraph .b would control plasma pressure compaction (P2C) equipment ''specially designed'' for the ''production'' of ceramic or composite body armor plates controlled by ECCN 1A613 or USML Category X. Paragraphs .c through .x would be reserved for

future use. Paragraph .y would control specific test, inspection, and ''production'' ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities controlled by ECCN 1A613 or USML Category X. Paragraphs .y.1 through .y.98 would be reserved for future use.

Proposed ECCN 1D613: ''Software'' ''Specially Designed'' for the ''Development,'' ''Production,'' Operation, Installation, Maintenance, Repair, Overhaul or Refurbishing of Commodities Controlled by ECCNs 1A613 or 1B613

Proposed ECCN 1D613 would impose national security (NS Column 1), regional stability (RS Column 1), and antiterrorism (AT Column 1) controls on ''software'' described herein. Paragraph .a would control ''software'' (other than ''software'' controlled in paragraph .y of ECCN 1D613) ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by ECCNs 1A613 (except 1A613.y) or 1B613 (except 1B613.y). Paragraphs .b through .x would be reserved for future use. Paragraph .y would control specific ''software'' ''specially designed'' for the ''production,'' ''development,'' or operation or maintenance of commodities listed in proposed ECCNs 1A613 or 1B613. While paragraphs .y.2 through .y.98 would be reserved, paragraph .y.1 would control specific ''software'' ''specially designed'' for the ''production,'' ''development,'' or operation or maintenance of commodities listed in proposed ECCNs 1A613.y or 1B613.y.

Proposed ECCN 1E613: ''Technology'' ''Required'' for the ''Development,'' ''Production,'' Operation, Installation, Maintenance, Repair, Overhaul or Refurbishing of Commodities Controlled by ECCNs 1A613 or 1B613, or ''Software'' Controlled by ECCN 1D613

Proposed ECCN 1E613 would impose national security (NS Column 1), regional stability (RS Column 1), and antiterrorism (AT Column 1) controls on the ''technology'' described herein. Paragraph .a would control ''technology'' (other than ''technology'' controlled under paragraph .y) ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by ECCNs 1A613 (except 1A613.y) or 1B613 (except 1B613.y), or software controlled by ECCN 1D613 (except 1D613.y). Paragraphs .b through .x would be reserved for future use. Paragraph .y would control specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul of commodities or software listed in ECCNs 1A613, 1B613, or 1D613. While paragraphs .y.2 through .y.98 would be reserved, paragraph .y.1 would control specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul of commodities or software listed in ECCNs 1A613.y, 1B613.y, or 1D613.y.

Inclusion of ''.y.99'' Paragraphs in 600 Series ECCNs

Proposed new ECCNs 1A613, 1B613, 1D613 and 1E613 also would contain a paragraph ''.y.99'' that would control any item that meets all of the following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these 0x613 ECCNs because, for example, the item was ''specially designed'' for a military use.

ECCNs 0A018 and 0A988 Amended

This proposed rule would remove the references to military helmets in ECCN 0A018.d. Conventional steel helmets described in paragraph .d.1, which are currently controlled under ECCN 0A988, would be moved to proposed ECCN 1A613.y.1. Military helmets described in paragraph .d.2 are currently subject to the ITAR, and that jurisdiction would not change under this proposed rule. Military helmets classified under ECCN 0A018.d (i.e., that are not described in paragraphs .d.1 or .d.2) would be moved to proposed ECCN 1A613.c under this proposed rule. Consequently, this proposed rule would amend the Related Controls paragraph to provide references to ECCNs 1A613.c and 1A613.y.1 and the USML for military helmets currently described in paragraph .d, and would remove the Note referencing paragraph .d.

In addition, this proposed rule would remove references to conventional military steel helmets from the heading and the control paragraph of ECCN 0A988. As a result of this move, these helmets would be subject to the *de minimis* limits applicable to ''600 series'' items that were proposed in the July 15 and November 7 proposed rules, as well as the restrictions on License Exception availability for ''600 series'' items. ECCN 0A988 would be amended to cross reference ECCN 1A613.y.1.

Under ECCN 0A018.d, military helmets are currently controlled for national security, antiterrorism, and United Nations (UN) reasons. Under proposed ECCN 1A613.c, they would be controlled for national security, regional stability, and antiterrorism reasons and no longer controlled for UN reasons. Controlling these items for UN reasons is unnecessary in light of the November 7 proposed rule's amendment to the RS Column 1 licensing policy, which stated that there would be a general policy of denial for ''600 series'' items if the destination is subject to a United States arms embargo or a United Nations Security Council arms embargo. A list of such destinations is identified in proposed section 740.2(a)(12), published in the November 7 proposed rule (and amended with this proposed rule, as discussed below).

Under ECCN 0A988, conventional steel military steel helmets are controlled for UN reasons only; under ECCN 1A613.y.1, they would be controlled for antiterrorism reasons only. This change would remove the CCL-based license requirement for exports or reexports of the helmets to Rwanda and Iraq since Rwanda is no longer subject to a UN arms embargo and since ECCN 0A988 helmets do not fit the scope of the arms and related materiel that are subject to the current UN arms embargo on Iraq. This change would also impose a new CCL-based license requirement for exports or reexports of 0A988 helmets to Cuba, Iran, Sudan, and Syria for foreign policy reasons.

Removing conventional military steel helmets from ECCN 0A988 would leave machetes as the only items controlled under that ECCN. Machetes do not meet the criteria of any proposed 600 series ECCN. Consequently, BIS reviewed machetes to determine whether such items should remain in ECCN 0A988, move to a different ECCN, or be removed from the CCL. Currently, ECCN 0A988 imposes a CCL-based license requirement for exports and reexports of machetes to Iraq, North Korea, and Rwanda due to UN arms embargoes. However, machetes do not fit the scope of arms and related materiel that are subject to UN arms embargoes. Further, machetes do not fit the scope of any ECCNs currently controlling items for anti-terrorism reasons. Therefore, this proposed rule would remove machetes from the CCL and designate them as EAR99 items. This proposal would help streamline the CCL and remove an item for which BIS believes no national security or foreign policy concern exists to merit control under the CCL. As EAR99 items, machetes would continue

to require licenses for certain countries subject to comprehensive embargoes and sanctions under part 746 and certain end uses and end users described in part 744 of the EAR.

ECCN 1A005 Amended

This proposed rule would revise the List of Items Controlled section in ECCN 1A005 to more positively identify soft body armor and hard body armor plates that are controlled under this ECCN. In addition, this proposed rule would amend the Related Controls paragraph of ECCN 1A005 to reference body armor controlled under ECCN 1A613 and police helmets and shields controlled under ECCN 0A979.

License Exception BAG Amended for Body Armor Controlled Under ECCN 1A613.d

In the July 15 proposed rule, BIS proposed adding new section 740.2(a)(13) to the EAR to identify when items classified under the ''600 series'' would be eligible for license exceptions. This proposed rule would amend proposed § 740.2(a)(13)(i) and current § 740.14 to authorize, under License Exception BAG, exports of body armor classified under newly proposed ECCN 1A613.d. License Exception BAG, in § 740.14, would be amended by adding a new paragraph (h), which generally is modeled on the exemptions in §§ 123.17(f) and (g) of the ITAR. In addition, to parallel § 123.17(g) of the ITAR, which authorizes exports without a license under certain circumstances to Afghanistan and Iraq, both of which are subject to arms embargoes under § 126.1 of the ITAR, this proposed rule would revise the July 15 rule's proposed restrictions on all license exceptions set forth in § 740.2(a)(12) to authorize exports of ECCN 1A613.d body armor to those two countries, as long as the specified conditions of license condition availability are met. Under this proposal for License Exception BAG, only exports, and not reexports, would be authorized for body armor controlled under ECCN 1A613.d. BIS encourages public comments on whether BAG should also authorize reexports of such body armor and, if so, whether conditions should apply to such reexports.

Concurrently, this proposed rule would revise the July 15 rule's proposed amendment to § 740.2(a)(12) by updating the list of countries currently subject to a United States or UN arms embargo by including Fiji and removing Sierra Leone.

License Exception TMP Amended for Body Armor Controlled Under ECCN 1A613.d

As with License Exception BAG, this proposed rule would amend License Exception TMP to authorize the export of ECCN 1A613.d body armor as a tool of trade. Specifically, this proposed rule would add new paragraph (a)(3)(v) to § 740.9, which generally would be modelled on the exemptions in §§ 123.17(f) and (g) of the ITAR. In order to authorize exports of ECCN 1A613.d body armor through TMP to countries that are in Country Group D:1 but not subject to a United States arms embargo, this proposed rule would add an exception in paragraph (a)(3)(i)(B)(*6*) of § 740.9 to the restriction on the use of TMP for destinations in Country Group D:1. To enable exports of ECCN 1A613.d body armor under TMP to Iraq, which is in Country Group D:1 and currently subject to a United States arms embargo, this proposed rule would add paragraph (a)(3)(i)(B)(*7*), which would authorize exports of ECCN 1A613.d body armor to Iraq under proposed paragraph (a)(3)(v)(B).

To ensure that body armor controlled under ECCN 1A005 may be exported to the same destinations as more sensitive body armor controlled under ECCN 1A613.d, this proposed rule would also add paragraph (a)(3)(i)(B)(*5*) to § 740.9 to authorize the export of ECCN 1A005 body armor to countries in Country Group D:1. In addition, to parallel existing License Exception TMP provisions for ECCN 1A005 body armor, reexports of such items would be permitted in addition to exports.

Because the proposed changes to License Exception TMP for body armor controlled under ECCN 1A613.d are modelled on the exemptions in §§ 123.17(f) and (g) of the ITAR, they would authorize only exports, and not reexports. BIS encourages comments on whether TMP should also authorize reexports of such body armor and, if so, what conditions should apply to such reexports.

Proposed New ECCNs and License Exception STA

The July 15 proposed rule would impose certain restrictions on the use of license exceptions for items that would be controlled under the new ''600 series'' ECCNs on the CCL. For instance, proposed § 740.20(g) describes the process for requesting License Exception STA eligibility for ''600 series'' end items classified in an ECCN ''xA6zz'' entry. This proposed rule differs from the July 15 proposed rule in that items described in proposed ECCN 1A613 would be eligible for § 740.20(c)(1) of License Exception STA without need for a determination described in § 740.2(g). Likewise, items described in ECCN 1B613 would also be eligible for § 740.20(c)(1) of License Exception STA without need for a determination. No items described in ECCNs 1A613, 1B613, 1D613, or 1E613 would be eligible for § 740.20(c)(2) of License Exception STA.

Relationship to the July 15 and November 7 Proposed Rules

As referenced above, the purpose of the July 15 proposed rule was to set up the framework to support the transfer of items from the USML to the CCL. To facilitate that goal, the July 15 proposed rule contained definitions and concepts that were meant to be applied across categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in either of those proposed rules or any provision in either of those proposed rules affect this proposed rule, BIS will consider comments on those provisions so long as they are in the context of the changes proposed in this rule.

BIS believes that the following aspects of the July 15 and November 7 proposed rules are among those that could affect this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20 (including restrictions proposed by the November 7, 2011, proposed rule that would apply to items outside the scope of that rule);
- Change to national security licensing policy in § 742.4;
- Licensing policy in § 742.4(b)(1)(ii);
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21;
- Addition of U.S. arms embargo policy regarding 600 series items set forth in § 742.4(b)(1)(ii) (national security) of the July 15 proposed rule to § 742.6(b)(1) (regional stability) of the November 7 proposed rule; and
- Definitions of terms in § 772.1.

Effects of This Proposed Rule

De minimis

The July 15 proposed rule would impose certain unique *de minimis* requirements on items controlled under the new 600 series ECCNs. Section 734.3 of the EAR provides, *inter alia,* that under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a *de minimis* percentage of controlled U.S.-origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. The personal protective equipment, shelters, and related items that would be subject to the EAR as a result of this proposed rule would become eligible for *de minimis* treatment.

Use of License Exceptions

Personal protective equipment, shelters, and related items currently on the USML that would be classified under proposed ECCNs 1A613 and 1B613 would become eligible for several license exceptions, including STA, which would be available for exports to certain government agencies of NATO and other multi-regime close allies. The exchange of information and statements required under STA is substantially less burdensome than the license application requirements currently required under the ITAR, as discussed in more detail in the ''Regulatory Requirements'' section of this proposed rule. None of the personal protective equipment, shelters, or related items that would be controlled by ECCNs 1A613 or 1B613 would be subject to the provision in the July 15 proposed rule that proposes to preclude the use of License Exception STA for ''600 series'' end items unless approval for such use is sought from and granted by BIS. The items covered by this rule also would be eligible for the following license exceptions: LVS (limited value shipments), up to $1500 and RPL (servicing and parts replacement). In addition, body armor classified under ECCN 1A613.d would be eligible for License Exceptions BAG (baggage) and TMP (temporary imports, exports, and reexports).

Alignment With the Wassenaar Arrangement Munitions List

The Administration has stated since the beginning of the Export Control Reform Initiative that the reforms will be consistent with U.S. obligations to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. This proposed rule would align controls on the items that it adds to the CCL by placing them in new 600 series ECCNs ending in ''13'' to parallel Category ML13 on the Wassenaar Arrangement Munitions List (''[Armored] or protective equipment, constructions and components''). Items in proposed ECCN 1A613 are covered by WAML Category ML 13.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before July 23, 2012. All comments must be in writing and submitted via one or more of the methods listed under the **ADDRESSES** caption to this notice. All comments (including any personal identifiable information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov* and, leaving the fields for information that would identify the commenter blank, and including no identifying information in the comment itself.

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. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is 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 OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the July 15 proposed rule, BIS believes that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative would increase the number of license applications submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML will become eligible for License Exception STA under this rule. As specified in the STA eligibility paragraphs for 1A613 and 1B613, such items would not need a determination of eligibility per § 740.20(g) of the EAR. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on personal protective equipment and related parts, components, production equipment, software, and technology. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports of such items, even when destined to NATO member states and other close allies, require State Department authorization. In addition, the exports of technology necessary to produce such items in the inventories of the United

States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, such technology would become eligible for export to NATO member states and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands that complying with the requirements of STA is likely less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 1E613 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, i.e., Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. However, under section 605(b) of the RFA, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

The changes proposed in this rule do not impact the original certification for these rules in the July 15 proposed rule. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification, which also takes into consideration the changes proposed by this proposed rule, is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number of them.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the USML would be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that the President determines to no longer warrant export control on the USML would become controlled on the CCL. Such items, along with certain military items that currently are on the CCL, will be identified in specific ECCNs known as the ''600 series'' ECCNs. In addition, some items currently on the CCL will move from existing ECCNs to the new 600 series ECCNs.

In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. As part of this proposal, parts and components that are ''specially designed'' for commodities proposed to be controlled under ECCN 1A613 and are not controlled under proposed USML Category X(d) would be included on the CCL. Such parts and components are more likely to be produced by small businesses, which would benefit from this proposed change.

Changing the jurisdictional status of the items described in this notice from the USML to the CCL would reduce the burden on small entities (and other entities as well) through: (i) Eliminating some license requirements; (ii) increasing availability of license exceptions; (iii) simplifying license application procedures; and (iv) reducing or eliminating registration fees.

These amendments are part of the Administration's effort to make the USML the U.S. Government's list of critical military and intelligence items that warrant the stringent worldwide export controls of the ITAR, while controlling all other military and intelligence items, particularly generic parts and components, through the CCL. BIS believes that the economic benefits for the proposed amendments include the significant reduction in the time spent determining and addressing issues associated with determining the jurisdictional status of such items now.

In addition, parts and components currently controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR, for those items that would no longer be controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin parts and components.

Many exports and reexports of Category X protective equipment and related items that would be placed on the CCL, as proposed in this rule, would become eligible for license exceptions that apply to shipments to U.S. Government agencies, shipments valued at less than $1,500 (equipment, components, and production equipment only), parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO member states and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and

obligations can apply to an unlimited number of transactions and have no expiration date, they would create a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required under the proposed rule, the process would be simpler and less costly under the EAR. When a USML Category X article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the ITAR licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way to determine whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex, and expensive sales presentations or contract negotiations. Under the ITAR procedure, the applicant must caveat all sales presentations with a reference to the need for government approval, and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule proposes to transfer from the USML to the CCL would realize cost savings by eliminating some or all registration fees currently assessed under the ITAR's licensing procedure. Currently, USML applicants must pay to use DDTC's licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Once the Category X items that are the subject to this rulemaking are moved from the USML to the CCL, entities currently applying for licenses from the Department of State will find their registration fees reduced if the number of ITAR licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirements will be eliminated.

De minimis treatment under the EAR would also become available for all items that this rule proposes to transfer from the USML to the CCL. Items subject to the ITAR will remain subject to the ITAR when they are incorporated abroad into a foreign-made product, regardless of the percentage of U.S content in that foreign-made product. However, foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. BIS is still considering comments made in response to the July 15 rule pertaining to these proposed *de minimis* levels and, as noted above, will consider *de minimis*-related comments to this proposed rule provided they are in the context of this proposed rule. However, BIS believes that any increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees, and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, no IRFA is required, and none has been prepared.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

2. As proposed to be amended July 15, 2011, at 76 FR 41958, and November 7, 2011, at 76 FR 65675, § 740.2 is further amended by:

a. Revising paragraph (a)(12) introductory text;

b. Revising the last sentence of paragraph (a)(13)(i)(E); and

c. Adding paragraph (a)(13)(i)(F).

The revision and additions read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(12) Items classified under the ''600 series'' that are destined to a country subject to a United States arms embargo or a United Nations Security Council arms embargo (Afghanistan, Belarus, Burma, China, Cote d'Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Haiti, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, Yemen, and Zimbabwe) may not be authorized under any license exception except by License Exception GOV under § 740.11(b)(2)(ii), License Exception TMP under § 740.9(a)(3)(v) for exports to Afghanistan and Iraq, and License Exception BAG under § 740.14(h)(2) for exports to Afghanistan and Iraq.

* * * * *

(13) * * *

(i) * * *

(E) * * * Except for MT-controlled items, exports and reexports to non-governmental end users in a country listed in § 740.20(c)(1) are authorized through License Exception STA under § 740.20(c)(1) so long as the item at issue at the time of export, reexport, or transfer (in-country) is ultimately destined for end use by the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, and search and rescue agencies of a government of one of the § 740.20(c)(1) countries or by the United States Government, or is for the ''development'' or ''production'' of an item for use by one of those agencies of those governments or a person in the United States; or

(F) License Exception BAG (§ 740.14).

* * * * *

3. Amend section 740.9 by adding paragraphs (a)(3)(i)(B)(*5*) through (*7*) and (a)(3)(v) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(3) * * *

(i) * * *

(B) * * *

(*5*) Body armor classified under ECCN 1A005 exported or reexported in accordance with paragraph (a)(2)(i) of this section;

(*6*) Body armor classified under ECCN 1A613.d exported in accordance with paragraph (a)(3)(v)(A) of this section, so long as the final destination is not a country listed in § 740.2(a)(12); and

(*7*) Body armor classified under ECCN 1A613.d exported to Iraq in accordance with paragraph (a)(3)(v)(B) of this section.

* * * * *

(v) *Restrictions specific to the export of body armor classified under ECCN 1A613.d.* (A) Exports to countries not identified in § 740.2(a)(12). U.S. persons may temporarily export one set of body armor classified under ECCN 1A613.d to countries not identified in § 740.2(a)(12), provided that:

(*1*) A declaration by the U.S. person and an inspection by a customs officer are made;

(*2*) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(*3*) The body armor is for that person's exclusive use and not for reexport or other transfer of ownership.

(B) Exports to Afghanistan or Iraq. U.S. persons may temporarily export one set of body armor classified under ECCN 1A613.d to Afghanistan or Iraq, provided that:

(*1*) A declaration by the U.S. person and an inspection by a customs officer are made;

(*2*) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed);

(*3*) The body armor is for that person's exclusive use and not for reexport or other transfer of ownership; and

(*4*) For temporary exports to Iraq, the U.S. person utilizing the license exception is either a person affiliated with the U.S. Government traveling on official business or is a person not affiliated with the U.S. Government but traveling to Iraq under a direct authorization by the Government of Iraq and engaging in humanitarian activities for, on behalf of, or at the request of the Government of Iraq.

* * * * *

4. Amend section 740.14 by adding paragraph (h) to read as follows:

§ 740.14 Baggage (BAG).

* * * * *

(h) *Special provisions: body armor controlled under ECCN 1A613.d.* (1) *Exports to countries not identified in § 740.2(a)(12).* U.S. persons may temporarily export one set of body armor classified under ECCN 1A613.d to countries not identified in § 740.2(a)(12) provided that:

(i) A declaration by the U.S. person and an inspection by a customs officer are made;

(ii) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(iii) The body armor is for that person's exclusive use and not for reexport or other transfer of ownership.

(2) *Exports to Afghanistan or Iraq.* U.S. persons may temporarily export one set of body armor classified under ECCN 1A613.d to Afghanistan or Iraq provided that:

(i) A declaration by the U.S. person and an inspection by a customs officer are made;

(ii) The body armor is with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed);

(iii) The body armor is for that person's exclusive use and not for reexport or other transfer of ownership; and

(iv) For temporary exports to Iraq only, the U.S. person utilizing this license exception is either a person employed by or under contract to the U.S. Government traveling on official business or is a person not employed by or under contract to the U.S. Government but traveling to Iraq under a direct authorization by the Government of Iraq and engaging in humanitarian activities for, on behalf of, or at the request of the Government of Iraq.

Note to paragraph (h): Body armor controlled under ECCN 1A005 is eligible for this License Exception under paragraph (b) of this section.

PART 742—[AMENDED]

5. The authority citation for 15 CFR part 742 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; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

6. Amend section 742.6 by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A606 (except 0A606.b and .y); 0A614

(except 0A614.y); 0A617 (except 0A617.y); 0B606 (except 0B606.y); 0B614 (except 0B614.y); 0B617 (except 0B617.y); 0C606 (except 0C606.y); 0C617 (except 0C617.y); 0D606 (except 0D606.y); 0D614 (except 0D614.y); 0D617 (except 0D617.y); 0E606 (except 0E606.y); 0E614 (except 0E614.y); 0E617 (except 0E617.y); 1A613 (except 1A613.y); 1B608 (except 1B608.y); 1B613 (except 1B613.y); 1C608; 1D608 (except 1D608.y); 1D613 (except 1D613.y); 1E608 (except 1E608.y); 1E613 (except 1E613.y); 3A982; 3D982; 3E982; 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8A620 (except 8A620.y); 8B609 (except 8B609.y); 8B620 (except 8B620.y); 8C609 (except 8C609.y); 8D609 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8D620 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 8A620.y or 8B620.y); 8E609 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E620 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A620.y or 8B620.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except ''technology'' for the ''development,'' ''production'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

* * * * *

PART 774—[AMENDED]

7. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

8. In Supplement No. 1 to part 774, Category 0, amend Export Control Classification Number 0A018 by:

a. Revising the ''Related Controls'' paragraph in the List of Items Controlled section to read below;

b. Removing and reserving ''Items'' paragraph (d) in the List of Items Controlled section; and

c. Removing the ''Note'' to ''Items'' paragraph (d) in the List of Items Controlled section.

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A018 Items on the Wassenaar Munitions List.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 0A979, 0A988, and 22 CFR 121.1 Categories I(a), III(b–d), and X(a). (2) See 0A617.a for items formerly controlled by ECCN 0A018.a. (3) See 1A613.c for military helmets providing less than NIJ Type IV protection and 1A613.y.1 for conventional military steel helmets that, immediately prior to [Insert effective date of final rule], were classified under 0A018.d and 0A988. (4) See 22 CFR 121.1 Category X(a)(5) and (a)(6) for controls on other military helmets.

* * * * *

9. In Supplement No. 1 to part 774, Category 0, amend Export Control Classification Number 0A988 by revising to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A988 Conventional military steel helmets as described by 0A018.d.1.; and machetes.

No items currently are in this ECCN. See ECCN 1A613.y.1 for conventional steel helmets that, immediately prior to [Insert effective date of final rule], were classified under 0A988. Machetes, which were classified under ECCN 0A988 prior to [Insert effective date of final rule], are designated as EAR99 items.

10. In Supplement No. 1 to part 774, Category 1, amend Export Control Classification Number 1A005 by:

a. Revising the Related Controls paragraph; and

b. Revising paragraphs a. and b. in the Items paragraph of the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1A005 Body armor and components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Bulletproof and bullet resistant vests (body armor) providing NIJ Type IV protection or greater are subject to the ITAR (see 22 CFR 121.1 Category X(a)). (2) Soft body armor and protective garments manufactured to military standards or specifications that provide protection

equal to NIJ level III or less are classified under ECCN 1A613.d.1. (3) Hard armor plates providing NIJ level III ballistic protection are classified under ECCN 1A613.d.2. (4) Police helmets and shields are classified under ECCN 0A979. (5) Other personal protective ''equipment'' ''specially designed'' for military applications not controlled by the USML or elsewhere in the CCL are classified under ECCN 1A613.e. (6) For ''fibrous or filamentary materials'' used in the manufacture of body armor, see ECCN 1C010. (7) See § 746.8(b)(1) for additional licensing requirements concerning this entry.

* * * * *

Items:

a. Soft body armor not manufactured to military standards or specifications that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008).

b. Hard body armor plates that provide ballistic protection less than NIJ level III (NIJ 0101.06, July 2008).

* * * * *

11. In Supplement No. 1 to part 774, Category 1, add a new Export Control Classification Number 1A613 between ECCNs 1A290 and 1A984 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1A613 Armored and protective ''equipment'' and related commodities, as follows:

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 1A613.y.	NS Column 1.
RS applies to entire entry except 1A613.y.	RS Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: $1500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 1A613 without the need for a determination described in § 740.20(g). Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 1A613.

List of Items Controlled

Unit: End items in number; parts, component, accessories and attachments in $ value

Related Controls: (1) Defense articles, such as materials made from classified information, that are controlled by USML Category X or XIII of the ITAR, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: References to ''NIJ Type'' protection are to the National Institute of Justice Classification guide at NIJ Standard-0101.06, Ballistic Resistance of Body Armor, and NIJ Standard 0108.01, Ballistic Resistant Protective Materials.

Items:

a. Armored plate ''specially designed'' for military use and not controlled by the USML.

Note: For controls on body armor plates, see ECCN 1A613.d.2 and USML Category X(a)(1).

b. Shelters ''specially designed'' to:

b.1. Provide ballistic protection for military systems, or

b.2. Protect against nuclear, biological, or chemical contamination.

c. Military helmets and helmet shells providing less than NIJ Type IV protection.

Note 1: See ECCN 0A979 for controls on police helmets and ECCN 1A613.y.1 for military steel helmets.

Note 2: See USML Category X(a)(5) and (a)(6) for controls on other military helmets.

d. Body armor and protective garments, as follows:

d.1. Soft body armor and protective garments manufactured to military standards or specifications that provide ballistic protection equal to or less than NIJ level III (NIJ 0101.06, July 2008); or

d.2. Hard body armor plates that provide ballistic protection equal to NIJ level III (NIJ 0101.06, July 2008).

Note: See ECCN 1A005 for controls on soft body armor and protective garments not manufactured to military standards or specifications and hard body armor plates providing less than NIJ level III protection. For body armor providing NIJ Type IV protection or greater, see USML Category X(a)(1).

e. Other personal protective ''equipment'' ''specially designed'' for military applications not controlled by the USML or elsewhere in the CCL.

f. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity controlled by ECCN 1A613 and not controlled elsewhere in the USML or CCL.

Note: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 1A613.x are controlled by ECCN 1A613.x.

y. Specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity subject to control in this ECCN and not elsewhere specified in the CCL, as follows:

y.1 Conventional military steel helmets.

y.2 to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 1A613.

12. In Supplement No. 1 to part 774, Category 1, add a new Export Control Classification Number 1B613 between ECCN 1B233 and 1B999 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1B613 Test, inspection, and ''production'' ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities controlled by ECCN 1A613 or USML Category X.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 1B613.y.	NS Column 1.
RS applies to entire entry except 1B613.y.	RS Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: $1500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 1B613 without the need for a determination described in § 740.20(g). Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 1B613.

List of Items Controlled

Unit: N/A.

Related Controls:

Related Definitions: N/A.

Items:

a. Test, inspection, and ''production'' ''equipment,'' not controlled by USML

Category X(c), that is ''specially designed'' for the ''production'' or ''development'' of commodities controlled by ECCN 1A613 or USML Category X.

b. Plasma pressure compaction (P2C) equipment ''specially designed'' for the production of ceramic or composite body armor plates controlled by ECCN 1A613 or USML Category X.

c. to x. [RESERVED]

y. Specific test, inspection, and ''production'' ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities controlled by ECCN 1A613 or USML Category X, as follows:

y.1 to y.98 [RESERVED]

y.99 Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 1B613.

13. In Supplement No. 1 to part 774, Category 1, add a new Export Control Classification Number 1D613 between ECCN 1D390 and 1D993 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1D613 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 1A613 or 1B613, as follows (see list of items controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 1D613.y.	NS Column 1.
RS applies to entire entry except 1D613.y.	RS Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any ''software'' in 1D613.

List of Items Controlled

Unit: $ value.

Related Controls: ''Software'' directly related to articles controlled by USML Category X is subject to the control of USML paragraph X(e) of the ITAR. See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

a. ''Software'' (other than ''software'' controlled in paragraph .y of this entry) ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by ECCNs 1A613 (except 1A613.y) or 1B613 (except 1B613.y).

b. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''production,'' ''development,'' or operation or maintenance of commodities controlled by ECCNs 1A613 or 1B613, as follows:

y.1. Specific ''software'' ''specially designed'' for the ''production,'' ''development,'' operation or maintenance of commodities controlled by ECCNs 1A613.y or 1B613.y.

y.2 through y.98 [RESERVED]

y.99 ''Software'' not identified on the CCL that (i) has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) would otherwise be controlled elsewhere in ECCN 1D613.

14. In Supplement No. 1 to part 774, Category 1, add a new Export Control Classification Number 1E613 between ECCN 1E355 and 1E994 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1E613 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 1A613 or 1B613 or ''software'' controlled by 1D613, as follows (see list of items controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 1E613.y.	NS Column 1.
RS applies to entire entry except 1E613.y.	RS Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any ''technology'' in 1E613.

List of Items Controlled

Unit: $ value.

Related Controls: Technical data directly related to articles controlled by USML Category X is subject to the control of USML paragraph X(e) of the ITAR. See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. ''Technology'' (other than ''technology'' controlled by paragraph .y of this entry) ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or ''software'' controlled by ECCNs 1A613 (except 1A613.y), 1B613 (except 1B613.y), or 1D613 (except 1D613.y).

b. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCNs 1A613, 1B613, or 1D613, as follows:

y.1. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair or overhaul of commodities or software controlled by ECCNs 1A613.y, 1B613.y, or 1D613.y.

y.2. through y.98 [RESERVED]

y.99. ''Technology'' that would otherwise be controlled elsewhere in this entry but that (i) has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

Dated: May 30, 2012.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2012–13745 Filed 6–6–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 7915]

RIN 1400–AD16

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category X

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category X

(personal protective equipment and shelters) of the U.S. Munitions List (USML) to describe more precisely the materials warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until July 23, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendment—Category X.''
- *Internet:* At *www.regulations.gov,* search for this notice by using this rule's RIN (1400–AD16).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, USML Category X.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (*see* ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (December 9, 2010) and ''Revisions to the United States Munitions List,'' 75 FR 76935 (December 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with U.S. allies, enhancing the defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end-uses, and end-users of greater concern than NATO allies and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning it on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Revision of Category X

This proposed rule revises USML Category X, covering personal protective equipment and shelters, to advance the national security objectives set forth above and to more accurately describe the articles within the category, in order to establish a ''bright line'' between the USML and the CCL for the control of these articles.

Body armor enumerated in paragraph (a)(1) would be that which meets or exceeds NIJ Standard-0101.06 Type IV. Type III body armor would be controlled on the CCL in proposed ECCN 1A613.

Anti-gravity suits, pressure suits, and atmosphere diving suits, currently controlled in paragraphs (a)(3), (a)(4), and (a)(5), respectively, would become subject to the EAR.

Paragraph (a)(7) would control certain protective goggles, spectacles, and visors with an optical density of 3 or greater.

Permanent and transportable shelters, currently controlled in paragraph (b), as well as equipment for the production of articles covered in this category (current paragraph (c)), would be controlled on the CCL in ECCNs 1A613 and 1B613, respectively.

Paragraph (d), which controls parts and components, is limited in scope to include only ceramic or composite body armor plates, laser protective lenses for the articles enumerated in (a)(7), and classified hardware. As with the revision of other categories, the USML will not control all generic, non-specific parts, components, accessories, and attachments that are in any way specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. These items would become subject to the new 600 series controls in Category 1 of the CCL, to be published separately by the Department of Commerce.

Finally, paragraph (f), which currently provides interpretations of Category X, is removed and placed in reserve.

Definition for Specially Designed

Although one of the goals of the export control reform initiative is to describe USML controls without using design intent criteria, a few of the

controls in the proposed revision nonetheless use the term ''specially designed.'' It is, therefore, necessary for the Department to define the term. Two proposed definitions have been published to date.

The Department first provided a draft definition for ''specially designed'' in the December 2010 ANPRM (75 FR 76935) and noted the term would be used minimally in the USML, and then only to remain consistent with the Wassenaar Arrangement or other multilateral regime obligation or when no other reasonable option exists to describe the control without using the term. The draft definition provided at that time is as follows: ''For the purposes of this Subchapter, the term 'specially designed' means that the end-item, equipment, accessory, attachment, system, component, or part (*see* ITAR § 121.8) has properties that (i) distinguish it for certain predetermined purposes, (ii) are directly related to the functioning of a defense article, and (iii) are used exclusively or predominantly in or with a defense article identified on the USML.''

The Department of Commerce subsequently published on July 15, 2011, for public comment, the Administration's proposed definition of ''specially designed'' that would be common to the CCL and the USML. The public provided more than 40 comments on that proposed definition on or before the September 13 deadline for comments. The Departments of State, Commerce, and Defense are now reviewing those comments and related issues, and the Departments of State and Commerce plan to publish for public comment another proposed rule on a definition of ''specially designed'' that would be common to the USML and the CCL. In the interim, and for the purpose of evaluation of this proposed rule, reviewers should use the definition provided in the December ANPRM.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Category 13 (WA–ML13). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category X contained in this notice and the new Category 1 ECCNs published separately by the Department of Commerce when reviewed together.

(2) The key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL for the control of these materials. The public is asked to provide specific examples of materials and miscellaneous articles whose jurisdiction would be in doubt based on this revision.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78), and accepted comments for 60 days.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 121.1 is amended by revising U.S. Munitions List Category X to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category X—Personal Protective Equipment and Shelters

(a) Personal protective equipment, as follows:

(1) Body armor providing a protection level equal to or greater than NIJ Type IV.

Note 1 to (a)(1): See National Institute of Justice Classification, NIJ Standard-0101.06.

Note 2 to (a)(1): For body armor providing a level of protection of Type I, Type II, Type IIA, Type IIIA, or Type III, see ECCNs 1A005 and 1A613.

(2) Personal protective clothing, equipment, or face paints ''specially designed'' to protect against or reduce detection by radar, IR, or other sensors at wavelengths greater than 900 nanometers.

Note to (a)(2): See Category XIII(j) for controls on related materials.

(3) [Reserved]

(4) [Reserved]

(5) Integrated helmets, not specified in Category VIII (h)(15) or Category XII, incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions.

(6) Helmets and helmet shells providing a protection level equal to or greater than NIJ Type IV.

(7) Goggles, spectacles, or visors, employing other than common broadband absorptive dyes and UV inhibitors as a means of protection (*e.g.,* narrow band filters/dyes or broadband limiters/coatings with high visible transparency), with optical density greater than 3 that protect against:

(i) Visible (in-band) wavelengths;

(ii) Thermal flashes associated with nuclear detonations; or

(iii) Near infrared or ultraviolet (out-of-band) wavelengths.

Note 1 to (a)(7): See Category XIII(j) for controls on related materials.

Note 2 to (a)(7): See Category XII for sensor protection equipment.

(8) Developmental personal protective equipment and shelters and ''specially designed'' parts, components, accessories, and attachments therefor, developed under a contract with the U.S. Department of Defense.

Note to (a)(8): Developmental personal protective equipment and shelters, and ''specially designed'' parts, components, accessories, and attachments therefor, determined to be subject to the EAR via a commodity jurisdiction determination (*see* § 120.4 of this subchapter) are not controlled by this paragraph.

(b) [Reserved]

(c) [Reserved]

(d) Parts, components, assemblies, and associated equipment for the personal protective equipment controlled in this category as follows:

(1) Ceramic or composite plates that provide protection equal to or greater than NIJ Type IV.

(2) Lenses for the goggles, spectacles, and visors controlled in paragraph (a)(7) of this category.

(3) Any component, part, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software;

(iii) Is manufactured using classified production data; or

(iv) Is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category.

(f) [Reserved]

* * * * *

Dated: May 31, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–13744 Filed 6–6–12; 8:45 am]

BILLING CODE 4710–25–P

NATIONAL MEDIATION BOARD

29 CFR Parts 1206

[Docket No. C–7034]

RIN 3140–ZA01

Representation Procedures and Rulemaking Authority; Correction

AGENCY: National Mediation Board.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the text of a proposed rule published in the **Federal Register** on May 15, 2012. The proposed rule changes the National Mediation Board's (NMB or Board) existing rules for run-off elections to incorporate statutory language added to the Railway Labor Act (RLA) by the Federal Aviation Administration Modernization and Reform Act of 2012.

DATES: Comment date: The NMB will extend the comment period by accepting written comments that are received on or before August 6, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

SUPPLEMENTARY INFORMATION: The National Mediation Board is correcting its proposed rule published in the **Federal Register** on May 15, 2012 at 77 FR 28536. This document makes a correction to clarify that Rule 1206.1 only applies in elections where 3 or more options receive valid votes.

Correction

In FR Doc. No. 2012–11770, on page 28537, in the right column, the text for *§ 1206.1 is correctly revised to read as follows:*

§ 1206.1 Run-off elections.

(a) In an election among any craft or class where three or more options (including the option for no representation) receive valid votes, if no option receives a majority of the legal votes cast, or in the event of a tie vote, the Board shall authorize a run-off election.

(b) In the event a run-off election is authorized by the Board, the names of the two options which received the highest number of votes cast in the first election shall be placed on the run-off ballot, and no blank line on which voters may write in the name of any organization or individual will be provided on the run-off ballot.

(c) Employees who were eligible to vote at the conclusion of the first election shall be eligible to vote in the run-off election except:

(1) Those employees whose employment relationship has terminated; and

(2) Those employees who are no longer employed in the craft or class.

Dated: June 4, 2012.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. 2012–13849 Filed 6–6–12; 8:45 am]

BILLING CODE 7550–01–P

Notices

Federal Register
Vol. 77, No. 110
Thursday, June 7, 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

Forest Service

Newspapers Used for Publication of Legal Notices by the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by the ranger districts, forests and regional office of the Intermountain Region to publish legal notices required under 36 CFR 215, 219, and 218. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions and notices of decision. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or appeal, and establish the date that the Forest Service will use to determine if comments or appeals were timely.

DATES: Publication of legal notices in the listed newspapers will begin on or after June 2012. The list of newspapers will remain in effect until October 2012, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kris Rutledge, Regional Appeals Coordinator, Intermountain Region, 324 25th Street, Ogden, UT 84401, and phone (801) 625–5146.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 215, 219, and 218 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 215, 219 and 218. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or appeals. The date the notice is published will be used to establish the official date for the beginning of the comment or appeal period. The newspapers to be used are as follows:

Regional Forester, Intermountain Region

Regional Forester decisions affecting National Forests in Idaho: *Idaho Statesman*
Regional Forester decisions affecting National Forests in Nevada: *Reno Gazette-Journal*
Regional Forester decisions affecting National Forests in Wyoming: *Casper Star-Tribune*
Regional Forester decisions affecting National Forests in Utah: *Salt Lake Tribune*
Regional Forester decisions that affect all National Forests in the Intermountain Region: *Salt Lake Tribune*

Ashley National Forest

Ashley Forest Supervisor decisions: *Vernal Express*
District Ranger decisions for Duchesne, Roosevelt: *Uintah Basin Standard*
Flaming Gorge District Ranger for decisions affecting Wyoming: *Rocket Miner*
Flaming Gorge and Vernal District Ranger for decisions affecting Utah: *Vernal Express*

Boise National Forest

Boise Forest Supervisor decisions: *Idaho Statesman*
Cascade District Ranger decisions: *The Star-News*
Emmett District Ranger decisions: *Messenger-Index*
District Ranger decisions for Idaho City and Mountain Home: *Idaho Statesman*
Lowman District Ranger decisions: *Idaho World*

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor and District Ranger decisions: *Casper Star-Tribune*

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal*
Caribou-Targhee Forest Supervisor decisions for the Targhee portion: *Post Register*
District Ranger decisions for Ashton, Dubois, Island Park, Palisades and Teton Basin: *Post Register*
District Ranger decisions for Montpelier, Soda Springs and Westside: *Idaho State Journal*

Dixie National Forest

Dixie Forest Supervisor decisions: *Daily Spectrum*
District Ranger decisions for Cedar City, Escalante, Pine Valley and Powell: *Daily Spectrum*
Fremont (formerly Teasdale) District Ranger decisions: *Richfield Reaper*

Fishlake National Forest

Fishlake Forest Supervisor and District Ranger decisions: *Richfield Reaper*

Humboldt-Toiyabe National Forest

Humboldt-Toiyabe Forest Supervisor decisions that encompass all or portions of both the Humboldt and Toiyabe National Forests: *Reno Gazette-Journal*
Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press*
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal*
Austin District Ranger decisions: *The Battle Mountain Bugle*
Bridgeport and Carson District Ranger decisions: *Reno Gazette-Journal*
Ely District Ranger decisions: *The Ely Times*
District Ranger decisions for Jarbidge, Mountain City and Ruby Mountains: *Elko Daily Free Press*
Santa Rosa District Ranger decisions: *Humboldt Sun*
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal*
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News*

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate*
Ferron District Ranger decisions: *Emery County Progress*
Moab District Ranger decisions: *Times Independent*
Monticello District Ranger decisions: *San Juan Record*
Price District Ranger decisions: *Sun Advocate*
Sanpete District Ranger decisions: *Sanpete Messenger*

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman*

Council District Ranger decisions: *Adams County Record*

District Ranger decisions for Krassel, McCall and New Meadows: *Star News*

Weiser District Ranger decisions: *Signal American*

Salmon-Challis National Forest

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald*

Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger*

District Ranger decisions for Lost River, Middle Fork and Challis-Yankee Fork: *The Challis Messenger*

District Ranger decisions for Leadore, North Fork and Salmon-Cobalt: *The Recorder-Herald*

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News*

District Ranger decisions for Fairfield and Minidoka: *The Times News*

Ketchum District Ranger decisions: *Idaho Mountain Express*

Sawtooth National Recreation Area: *The Challis Messenger*

Uinta-Wasatch-Cache National Forest

Forest Supervisor decisions for the Uinta portion, including the Vernon Unit: *Provo Daily Herald*

Forest Supervisor decisions for the Wasatch-Cache portion: *Salt Lake Tribune*

Forest Supervisor decisions for the entire Uinta-Wasatch-Cache: *Salt Lake Tribune*

District Ranger decisions for the Heber-Kamas, Pleasant Grove, and Spanish Fork Ranger Districts: *Provo Daily Herald*

District Ranger decisions for Evanston and Mountain View: *Uinta County Herald*

District Ranger decisions for Salt Lake: *Salt Lake Tribune*

District Ranger decisions for Logan: *Logan Herald Journal*

District Ranger decisions for Ogden: *Standard Examiner*

Dated: May 31, 2012.

Marlene Finley,

Deputy Regional Forester.

[FR Doc. 2012–13798 Filed 6–6–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Rural Business Opportunity Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: USDA announces the availability of grants through the Rural Business Opportunity Grant Program (RBOG) for Fiscal Year (FY) 2012. Public bodies, nonprofit corporations, institutions of higher education, Indian tribes on Federal or State reservations and other Federally Recognized Native American Tribes or tribal groups, and rural cooperatives may apply. Approximately $2.37 million is available in reserved and unreserved funding and will be distributed as follows: $1,140,610.78 is reserved for projects benefitting Federally Recognized Native American Tribes (Native American) in rural areas and $1,230,020 is unreserved. Applications for unreserved funding are limited to $50,000 or less. Applications for reserved funding have no limit. See 7 CFR Part 4284, subpart G.

DATES: Your application must be received by August 6, 2012, or it will not be considered for funding.

ADDRESSES: You should contact a USDA Rural Development State Office (State Office) if you have questions or need a copy of the application forms. Applications may be submitted in electronic or paper format. If you want to submit an electronic application, follow the instructions for the RBOG funding announcement on *www.grants.gov*. If you want to submit a paper application, send it to the State Office located in the State where the project is located. In the case of a multi-state project, you must submit your application to the State Office located in the State where the majority of the work will be conducted. A list of State Offices and their contact information follows:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279

American Samoa (see Hawaii)

California

USDA Rural Development State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848

Colorado

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2903

Connecticut (see Massachusetts)

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585

Federated States of Micronesia (see Hawaii)

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034

Guam (see Hawaii)

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858

Kansas

USDA Rural Development State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331

Marshall Islands (see Hawaii)

Maryland (see Delaware)

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480

Montana

USDA Rural Development State Office, 2229 Boot Hill Court, Bozeman, MT 59715–7914, (406) 585–2580/TDD (406) 585–2562

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD 7–1–1

New Hampshire (see Vermont)

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113

Northern Mariana Islands (see Hawaii)

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387

Palau (see Hawaii)

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332

Rhode Island (see Massachusetts)

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4321/TDD (801) 524–3309

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080/TDD (802) 223–6365

Virgin Islands (see Florida)

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836

Western Pacific (see Hawaii)

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733

FOR FURTHER INFORMATION CONTACT: Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW., MS–3250, Room 4016–South, Washington, DC 20250–3250, (202) 720–7558.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Type: Rural Business Opportunity Grants.

Announcement Type: Funding Announcement.

Catalog of Federal Domestic Assistance Number: 10.773.

Dates: Application Deadline: You must submit your application by August 6, 2012, to be eligible for FY 2012 grant funding. Applications submitted after

the deadline date will not be eligible for FY 2012 grant funding.

I. Funding Opportunity Description

The RBOG program is authorized under section 306(a)(11) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(11)).

The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program includes the following:

- Rural business incubators
- Technology-based economic development
- Feasibility studies and business plans
- Long-term business strategic planning
- Leadership and entrepreneur training

In addition, we are encouraging applications that will support regional economic development.

Definitions

The terms you need to know are published at 7 CFR 4284.3 and 4284.603.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2012.

Total Funding: $2.37 million distributed as follows: $1,140,610.78 is reserved for projects benefitting Native Americans in rural areas and $1,230,020 is unreserved.

Maximum Award: $50,000 for unreserved funds; no maximum for Native American reserved funds.

Anticipated Award Date: September 30, 2012.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to public bodies, nonprofit corporations, institutions of higher education, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents.

An applicant must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number (see Section IV.B.) and register in the Central Contractor Registry (CCR) prior to submitting an application. (See 2 CFR 25.200(b).) In addition, an applicant must maintain its registration in the CCR database during the time its application is active. Finally, an applicant must have the necessary processes and systems in place to comply with the reporting requirements in 2 CFR 170.200(b), as long as it is not exempted from reporting. Exemptions are identified at 2 CFR 170.110(b).

For additional information on applicant eligibility, see 7 CFR 4284.620.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Your application must propose to use project funds, including grant and other contributions committed under the evaluation criterion located at 7 CFR 4284.639(c), for eligible purposes (see 7 CFR 4284.621). Also, the proposed project must benefit a rural area; thus, all ultimate recipients of services provided through the project must either reside in a rural area (if an individual) or be located in a rural area (if a business).

Project funds cannot be used for construction, planning a facility, engineering work, or revolving loan funds. See 7 CFR 4284.10 and 4284.629 for more information on ineligible uses of funds. However, if you include funds in your budget that are for ineligible purposes, we will consider your application for funding if the ineligible purposes total 10 percent or less of your total project budget. However, if your application is successful, those ineligible costs must be removed before we will make the grant award. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

Additionally, awards made under this announcement are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, Public Law 112–55, Division A, Sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. You must provide representation as to whether your organization or any officers or agents of your organization has or has not been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application. In addition, you must provide representation as to whether your organization has or does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. To comply with these provisions, you must include the following in your application. All applicants must complete the paragraph (1) of this representation, and all corporate applicants also must complete paragraphs (2) and (3) of this representation.

(1) [INSERT NAME OF APPLICANT] is __ is not _____ (check one) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If you checked ''is'' above, you must complete paragraphs (2) and (3) of the representation. If you checked ''is not'' above, you may leave the remainder of the representation blank.

(2) [INSERT NAME OF APPLICANT] has __ has not _____ (check one) been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application. [INSERT NAME OF APPLICANT] has __ has not _____ (check one) had any officer or agent convicted of a felony criminal violation for actions taken on behalf of [INSERT NAME OF APPLICANT] under Federal or State law in the 24 months preceding the date of signature.

(3) [INSERT NAME OF APPLICANT] has __ does not have _____ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Finally, if you have an existing RBOG award, you must be performing satisfactorily to be considered eligible for a new award. Satisfactory performance includes, but is not limited to, being up-to-date on all financial and performance reports and being current on all tasks as approved in the work plan.

D. Completeness Eligibility

Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. In particular, you must include a project budget that identifies each task to be performed, along with the time period of performance for each task, and the amounts of grant funds and other contributions needed for each task. For

more information on what is required for an application, see 7 CFR 4284.638.

IV. Fiscal Year 2012 Application and Submission Information

A. Address To Request Application Package

For further information, you should contact the USDA Rural Development State Office identified in the **ADDRESSES** section of this Notice to obtain copies of the application package.

B. Content and Form of Submission

Your application must contain all of the required elements described at 7 CFR 4284.638. You may submit your application in paper form or electronically. If you submit in paper form, any forms requiring signatures must include an original signature.

To submit an application electronically, you must use the Grants.gov Web site at: *http://www.grants.gov.* You may not submit an application electronically in any way other than through Grants.gov.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- To use Grants.gov, you must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at (866) 705–5711. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- Before submitting an application you must be registered and maintain registration in the Central Contractor Registration (CCR) database. (See 2 CFR Part 215.) You may register for the CCR at *https://www.uscontractorregistration.com/,* or by calling (877) 252–2700.
- You must submit all of your application documents electronically through Grants.gov.
- After electronically submitting an application through Grants.gov, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- You may be required to provide original signatures on forms at a later date.
- You can locate the Grants.gov downloadable application package for this program by using a keyword, the program name, the Catalog of Federal Domestic Assistance Number, or the Funding Opportunity Number.

C. Submission Date and Time

Application Deadline date: August 6, 2012.

Explanation of Deadlines: Complete paper applications must be in the USDA Rural Development State Office by the deadline date, 4 p.m. local time. Electronic applications submitted through Grants.gov will be accepted by the system through midnight eastern time on the deadline date.

V. Application Review Information

We will review each application to determine if it is eligible for assistance based on the requirements in 7 CFR part 4284, subpart G as well as other applicable Federal regulations. Eligible applications will be tentatively scored by the USDA Rural Development State Offices and submitted to the National Office for final review and selection.

You must address each selection criterion outlined in 7 CFR 4284.639 in your application. Any criterion not substantively addressed will receive zero points.

To assist you with addressing each criterion, we are providing what we consider to be necessary documentation as well as how we will score each criterion below.

1. Sustainability of Economic Development (7 CFR 4284.639(a)). You must identify the economic development (see 7 CFR 4284.603 for a definition) that will occur as a result of your project and describe how that development will be sustainable without any assistance from governments (including local, State, and Federal) or other organizations outside the community. Sustainability may include, but is not limited to, user fees or a continuing source of funds from a community organization. We will score the criterion as follows:

- 0 points if you do not identify at least one type of economic development.
- 1–2 points if you identify at least one type of economic development, but are unable to reasonably quantify it or demonstrate sustainability.
- 3–4 points if you identify at least one type of economic development and reasonably quantify it.
- 5–6 points if you identify at least one type of economic development, reasonably quantify it, and demonstrate that it can be sustained for at least 1 year after the completion of the project through user fees, community organization support, or other non-governmental methods.
- 7–8 points if you identify at least one type of economic development, reasonably quantify it, and demonstrate that it can be sustained for at least 3 years after the completion of the project through user fees, community organization support, or other non-governmental methods.
- 9–10 points if you identify at least one type of economic development, reasonably quantify it, and demonstrate that it can be sustained for at least 5 years after the completion of the project through user fees, community organization support, or other non-governmental methods.

2. Improvements in the Quality of Economic Activity (7 CFR 4284.639(b)). You must quantitatively describe how your project will improve the economic activity in your service area through higher wages, improved benefits, greater career potential, and/or the use of higher level skills than are currently typical. We will score the criterion as follows:

- 0 points if you do not quantitatively describe at least one way your project will improve the economic activity in your service area.
- 1–2 points if you quantitatively describe one way your project will improve the economic activity in your service area.
- 3–4 points if you quantitatively describe two ways your project will improve the economic activity in your service area.
- 5–6 points if you quantitatively describe three ways your project will improve the economic activity in your service area.
- 7–8 points if you quantitatively describe four ways your project will improve the economic activity in your service area.
- 9–10 points if you quantitatively describe five or more ways your project will improve the economic activity in your service area.

3. Other Contributions (7 CFR 4284.639(c)). You must provide documentation indicating who will be providing the other source of funds, the amount of funds, when those funds will be provided, and how the funds will be used in the project budget. Examples of acceptable documentation include: a signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the project. The other contributions you identify must be specifically dedicated to the project and cannot include your organization's general operating budget. No credit will be given for in-kind donations of time, goods, and/or services from any

organization, including the applicant organization. We will score the criterion as follows:

- 0 points if your other contributions total 25 percent or less of the total project cost.
- 10 points if your other contributions are greater than 25 and 50 percent of the total project cost.
- 20 points if your other contributions are more than 50 percent and less than or equal to 80 percent of the total project cost.
- 30 points if your other contributions are more than 80 percent of the total project cost.

4. Major Natural Disaster (7 CFR 4284.639(d)(1)). You must provide a Federal Emergency Management Agency (FEMA) disaster reference number for any disasters that occurred within 3 years of the application deadline in the counties in the project service area. We will award 15 points if a FEMA disaster reference number is provided for the majority of the counties in your service area; otherwise we will award 0 points.

5. Fundamental Structural Change (7 CFR 4284.639(d)(2)). You must describe a structural change (for example, the loss of major employer or closing of a military base) that occurred within or affected one or more of the counties in the project service area. The structural change must have occurred within the 3 years prior to submitting your application. We will award 15 points if the structural change affected the majority of the counties in your service area and if it caused the loss of at least 100 jobs; otherwise we will award 0 points.

6. Long-Term Poverty (7 CFR 4284.639(d)(3)). You must provide the percentage of residents living below the poverty level from the 1990 and the 2010 decennial censuses for all counties and all States in the service area. We will award 10 points if the majority of counties in the service area have a percentage of residents living below that poverty level that is above the state percentage in both the 1990 and the 2010 censuses; otherwise we will award 0 points.

7. Long-Term Population Decline (7 CFR 4284.639(d)(4)). You must provide population statistics from the 1990 and the 2010 decennial censuses for all counties in the service area. We will award 10 points if the majority of the counties in the service area experienced a net loss of population between 1990 and 2010; otherwise we will award 0 points.

8. Long-Term Job Deterioration (7 CFR 4284.639(d)(5)). You must provide the unemployment rate from the 1990 and 2010 decennial censuses for all counties in the service area. We will award 10 points if the majority of counties in the service area experienced an increase in the unemployment rate between 1990 and 2010; otherwise we will award 0 points.

9. Best Practices (7 CFR 4284.639(e)). You must describe how your project could be replicated, including any potentially necessary modifications, in other communities or service areas. We will score the criterion as follows:

- 0 points if your project could not be replicated.
- 1–3 points if your project could be replicated in another community, but with substantial modifications.
- 4–6 points if your project could be replicated in another community, but with moderate modifications.
- 7–10 points if your project could be replicated in another community, with minimal modifications.

10. Discretionary Points (7 CFR 4284.639(f)). If you wish to be considered for discretionary points, your application must include a description of the following:

- The project service area, and/or
- The special importance for implementation of a regional strategic plan in partnership with other organizations, and/or
- The extraordinary potential for success of the project due to superior project plans or qualifications of your organization, including the key personnel for the project.

Because awarding these points is completely at the option of the State Director or the Administrator, no additional point break down can be provided.

The National Office will review the scores based on the grant selection criteria and weights contained in 7 CFR 4284.639 and this Notice. Applications will be funded in rank order.

VI. Award Administration Information

A. Award Notices

If your application is successful, you will receive notification regarding funding from the Rural Development State Office where the application was submitted. You must comply with all applicable statutes and regulations before the grant award will be approved. If your application is not successful, you will receive notification, including mediation procedures and appeal rights, by mail.

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable (see 7 CFR part 11). Instructions on the appeal process will be provided at the time an applicant is notified of the adverse decision.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subparts A and G, parts 3015, 3016, 3019, 3052, and 2 CFR parts 215 and 417. All recipients of Federal financial assistance are required to comply with the Federal Funding Accountability and Transparency Act of 2006 and must report information about subawards and executive compensation (see 2 CFR part 170). These recipients must also maintain their registration in the CCR database as long as their grants are active. These regulations may be obtained at *http://www.gpoaccess.gov/cfr/index.html.*

The following additional requirements apply to grantees selected for this program:

- Agency-approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent To Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''
- Form RD 400–4, ''Assurance Agreement.''

VII. Agency Contacts

If you have questions about this Notice, please contact the USDA Rural Development State Office located in your State as identified in the **ADDRESSES** section of this notice.

VIII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of

Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: May 21, 2012.

John Padalino,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2012–13835 Filed 6–6–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: USDA announces the availability of grants through the Rural Cooperative Development Grant (RCDG) Program for Fiscal Year (FY) 2012. Nonprofit corporations and institutions of higher education may apply. Approximately $5.8 million is available. Applications are limited to a maximum of $175,000 and matching funds are required. The grant period is limited to a one-year timeframe.

DATES: You must submit your complete application by August 6, 2012, or it will not be considered for FY 2012 grant funding.

ADDRESSES: You should contact a USDA Rural Development State Office (State Office) if you have questions. You are encouraged to contact your State Office well in advance of the application deadline to discuss your project and ask any questions about the application process. Application materials may also be obtained at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html.* If you want to submit an electronic application, follow the instructions for the RCDG funding announcement on *http://www.grants.gov.* If you want to submit a paper application, send it to the State Office located in the State where you are headquartered. Here is a list of State Offices and their contact information (**NOTE:** Telephone numbers listed are not toll-free.):

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905

American Samoa (see Hawaii)

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848

Colorado

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, PO Box 25426, Denver, CO 80225–0426, (720) 544–2903

Commonwealth of the Northern Marianas Islands—CNMI (see Hawaii)

Connecticut (see Massachusetts)

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585

Federated States of Micronesia (see Hawaii)

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034

Guam (see Hawaii)

Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/American Samoa/Commonwealth of the Northern Marianas Islands—CNMI

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858

Kansas

USDA Rural Development State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405 Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331

Marshall Islands (see Hawaii)

Maryland (see Delaware)

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480

Montana

USDA Rural Development State Office, 2229 Boot Hill Court, Bozeman, MT 59715–7914, (406) 585–2580/TDD (406) 585–2562

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD 7–1–1

New Hampshire (see Vermont)

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113

Northern Mariana Islands (see Hawaii)

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007

Oregon

USDA Rural Development State Office, 1201 NE. Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387

Palau (see Hawaii)

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332

Rhode Island (see Massachusetts)

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4321/TDD (801) 524–3309

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080/TDD (802) 223–6365

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753

Virgin Islands (see Florida)

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836

Western Pacific (see Hawaii)

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733

FOR FURTHER INFORMATION CONTACT: Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW., Mail Stop-3250, Room 4016–South, Washington, DC 20250–3250, (202) 720–7558.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Cooperative Development Grants.

Announcement Type: Funding Announcement.

Catalog of Federal Domestic Assistance Number: 10.771.

Date: Application Deadline. You must submit your complete application by August 6, 2012, or it will not be considered for FY 2012 grant funding.

I. Funding Opportunity Description

The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. Grant funds may be used to pay for 75 percent (95 percent when the applicant is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Centers may have the expertise on staff or they can contract out for the expertise, to assist individuals or entities in the startup, expansion or operational improvement of rural businesses, especially cooperative or mutually-owned businesses. The RCDG program is authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(e)). You should become familiar with the regulations for this program published at 7 CFR part 4284, subparts A and F, which are incorporated by reference in this Notice.

Definitions

The terms you need to understand are defined and published at 7 CFR 4284.3 and 7 CFR 4284.504. In addition, the terms ''rural'' and ''rural area,'' defined at section 343(a)(13) of the CONACT (7 U.S.C. 1991(a)), are incorporated by reference, and will be used for this program instead of those terms currently published at 7 CFR 4284.3. Finally, there has been some confusion on the Agency's meaning of the terms ''conflict of interest,'' and ''mutually-owned business,'' because they are not defined in the CONACT or in the regulations used for the program. Therefore, the terms are clarified and should be understood as follows.

Conflict of interest—A situation in which the ability of a person or entity to act impartially would be questionable due to competing professional or personal interests. An example of conflict of interest occurs when the grantee's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Mutually-owned business—An organization owned and governed by members who either are its consumers, producers, employees, or suppliers.

II. Award Information

Type of Award: Grant.
Fiscal Year Funds: FY 2012.
Approximate Total Funding: $5.8 million.
Maximum Award: $175,000.
Anticipated Award Date: September 30, 2012.

III. Eligibility Information

A. Eligible Applicants

You must be a nonprofit corporation or an institution of higher education to apply for this program. Public bodies and individuals cannot apply for this program. See 7 CFR 4284.507.

An applicant must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the Central Contractor Registry (CCR) prior to submitting an application. (See 2 CFR 25.200(b)). An applicant must provide their DUNS number in the application. In addition, an applicant must maintain its registration in the CCR database during the time its application is active. Finally, an applicant must have the necessary processes and systems in place to comply with the reporting requirements in 2 CFR 170.200(b), as long as it is not exempted from reporting. Exemptions are identified at 2 CFR 170.110(b).

B. Cost Sharing or Matching

Your matching funds requirement is 25 percent of the total project cost (5 percent for 1994 Institutions). See 7 CFR 4284.508. When you calculate your matching funds requirement, please round up or down to whole dollars as appropriate. An example of how to calculate your matching funds is as follows:

1. Take the amount of grant funds you are requesting and divide it by .75. This will give you your total project cost.

Example: $175,000 (grant amount)/.75 (percentage for use of grant funds) = $233,333 (total project cost).

2. Subtract the amount of grant funds you are requesting from your total project cost. This will give you your matching funds requirement.

Example: $233,333 (total project cost) − $175,000 (grant amount) = $58,333 (matching funds requirement).

3. A quick way to double check that you have the correct amount of matching funds is to take your total project cost and multiply it by .25.

Example: $233,333 (total project cost) × .25 (maximum percentage of matching funds requirement) = $58,333 (matching funds requirement).

You must verify that all matching funds are available during the grant period and provide this documentation with your application. If you are awarded a grant, additional verification documentation may be required to confirm the availability of matching funds.

Other guidelines for matching funds that you must follow are below.

- They must be spent on eligible expenses during the grant period.
- They must be from eligible sources.
- They must be spent in advance or as a pro-rata portion of grant funds being spent.
- They must be provided by either the applicant or a third party in the form of cash or an in-kind contribution.
- They cannot include board/advisory council members' time.
- They cannot include other Federal grants unless provided by authorizing legislation.
- They cannot include cash or in-kind contributions donated outside the grant period.
- They cannot include over-valued, in-kind contributions.
- They cannot include any project costs that are ineligible under the RCDG program.
- They can include loan funds from a Federal source.
- They can include travel and incidentals for board/advisory council members if you have established written policies explaining how these costs are normally reimbursed, including rates. You must include an explanation of this policy in your application or the contributions will not be considered as eligible matching funds.
- You must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a matching funds requirement.
- In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by you cannot be provided for the direct benefit of their own projects as USDA Rural Development considers this to be a conflict of interest or the appearance of a conflict of interest.

C. Other Eligibility Requirements

Your application will not be considered for funding if it does not propose the establishment or continuation of a cooperative development center concept. You must use project funds, including grant and matching funds for eligible purposes (See 7 CFR 4284.508). In addition, project funds may be used for programs providing for the coordination of services and sharing of information among the Centers (See 7 U.S.C. 1932(e)(4)(C)(vi)). All project activities must be for the benefit of a rural area.

Project funds, including grant and matching funds cannot be used for ineligible grant purposes (See 7 CFR 4284.10). Also, you may not use project funds for the following:

1. To purchase, rent, or install laboratory equipment or processing machinery;
2. To pay for the operating costs of any entity receiving assistance from the Center;
3. To pay costs of the project where a conflict of interest exists; or
4. To fund any activities prohibited by 7 CFR parts 3015 or 3019.

In addition, your application will not be considered for funding if it does any of the following:

- Focuses assistance on only one cooperative or mutually-owned business;
- Requests more than the maximum grant amount; or
- Proposes ineligible costs that equal more than 10 percent of total project costs.

We will consider your application for funding if it includes ineligible costs of 10 percent or less of total project costs, as long as it is determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs, before the Agency will make the grant award, or the amount of the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

D. Grant Period

Your application must include a one-year grant period or it will not be considered for funding. The grant period should begin no earlier than October 1, 2012, and no later than January 1, 2013. Prior approval is needed from the Agency if you are awarded a grant and desire the grant period to begin earlier or later than previously discussed. Projects must be completed within the one-year timeframe. The Agency may approve requests to extend the grant period for up to an additional 12 months at its discretion. Further guidance on grant period extensions will be provided in the award document.

If you have an existing RCDG award, you must be performing satisfactorily to be considered eligible for a new award. Satisfactory performance includes being up-to-date on all financial and performance reports and being current

on all tasks as approved in the work plan. The Agency will use its discretion to make this determination.

E. Completeness

Your application will not be considered for funding if it does not provide sufficient information to determine eligibility and scoring. In particular, you must include all of the forms and proposal elements as discussed in the regulation and as clarified further in this Notice. For more information on what is required for an application, see 7 CFR 4284.510.

IV. Application and Submission Information

A. Address To Request Application Package

For further information, you should contact your State Office identified in the **ADDRESSES** section of this Notice. Application materials may also be obtained at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html*.

B. Form of Submission

- You may submit your application in paper form or electronically. If you submit in paper form, any forms requiring signatures must include an original signature. To submit an application electronically, you must use the Grants.gov Web site at *http://www.grants.gov*. You may not submit an application electronically in any way other than through Grants.gov.
- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- To use Grants.gov, you must have a DUNS number, which can be obtained at no cost via a toll-free request line at (866) 705–5711. Please note that obtaining the DUNS number is required, prior to submitting an application. You must also maintain registration in the CCR database. (See 2 CFR part 25.) You may register for the CCR at *https://www.uscontractorregistration.com/*, or by calling (877) 252–2700.
- You must submit all of your application documents electronically through Grants.gov.
- After electronically submitting an application through Grants.gov, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- You may be required to provide original signatures on forms at a later date.
- You can locate the Grants.gov downloadable application package for this program by using a keyword, the program name, the Catalog of Federal Domestic Assistance Number, or the Funding Opportunity Number.

C. Application Contents

Your application must contain all of the required forms and proposal elements described in 7 CFR 4284.510 and as otherwise clarified in this Notice. Specifically, your application must include (1) the required forms as described in 7 CFR 4284.510(b) and (2) the required proposal elements as described in 7 CFR 4284.510(c). Further clarification of application requirements is as follows.

1. Clarifications on Forms

a. Your DUNS number should be identified in the ''Organizational DUNS'' field on Standard Form (SF) 424, ''Application for Federal Assistance.'' Since there are no specific fields for a CCR number (formerly called a Commercial and Government Entity code or a CAGE code) and expiration date, you may identify them anywhere you want to on form SF 424. In addition, you should provide the DUNS and the CCR number and expiration date under the applicant eligibility discussion in your proposal narrative. If you do not include the CCR number and expiration date and the DUNS in your application, it will not be considered for funding.

b. You can voluntarily fill out and submit the ''Survey on Ensuring Equal Opportunity for Applicants'' as part of your application if you are a nonprofit organization.

2. Clarifications on Proposal Elements

a. You must include the title of the project as well as any other relevant identifying information on the Title Page.

b. You must include page numbers on the Table of Contents for each component of the application to facilitate review.

c. Your Executive Summary must include the items in 7 CFR 4284.510(c)(3), and also discuss the percentage of work that will be performed among organizational staff, consultants, or other contractors. It should not exceed two pages.

d. Your Eligibility Discussion must not exceed two pages and cover how you meet the eligibility requirements for applicant, matching funds, other eligibility requirements and grant period.

e. Your Proposal Narrative must not exceed 40 pages and should describe the essential aspects of the project.

1. You are only required to have one title page for the proposal.

2. If you list the evaluation criteria on the Table of Contents and specifically and individually addressed each criterion in narrative form, then it is not necessary for you to include an Information Sheet. Otherwise the Information Sheet is required under 7 CFR 4284.510(c)(ii).

3. You should include the following under Goals of the Project.

A. A statement that substantiates that the Center will effectively serve rural areas in the United States;

B. A statement that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

C. A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services. Expected economic impacts should be tied to tasks included in the work plan and budget; and

D. A statement that the Center, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal government, and State and local governments.

4. The Agency has established annual performance evaluation measures to evaluate the RCDG program. You must provide estimates on the following performance evaluation measures.

- Number of groups who are not legal entities assisted.
- Number of businesses that are not cooperatives assisted.
- Number of cooperatives assisted.
- Number of businesses incorporated that are not cooperatives.
- Number of cooperatives incorporated.
- Total number of jobs created as a result of assistance.
- Total number of jobs saved as a result of assistance.
- Number of jobs created for the Center as a result of RCDG funding.
- Number of jobs saved for the Center as a result of RCDG funding.

It is permissible to have a zero in a performance element. When you calculate jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the RCDG funding or actual jobs to be created by cooperative businesses or other businesses as a result of assistance from your organization. When you calculate jobs saved, estimates should be based only on actual jobs that have been lost if your organization did not receive RCDG funding or actual jobs that would have been lost without assistance from your organization.

5. You can also suggest additional performance elements for example where job creation or jobs saved may not be a relevant indicator (e.g. housing). These additional criteria should be specific, measurable performance elements that could be included in an award document.

6. You must describe in the application how you will undertake to do each of the following. We would prefer if you described these undertakings within proposal evaluation criteria to reduce duplication in your application. The specific proposal evaluation criterion where you should address each undertaking is noted below.

a. Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sectors (should be presented under proposal evaluation criterion number 10, utilizing the specific requirements of Section V.B.10);

b. Make arrangements for the Center's activities to be monitored and evaluated (should be addressed under proposal evaluation criterion number 8 utilizing the specific requirements of Section V.B.8); and

c. Provide an accounting for the money received by the grantee in accordance with 7 CFR part 4284, subpart F. This should be addressed under proposal evaluation criterion number 1, utilizing the specific requirements of Section V.B.1.

7. You should present the Work Plan and Budget proposal element under proposal evaluation criterion number 8, utilizing the specific requirements of Section V.B.8 of this Notice to reduce duplication in your application.

8. You should present the Delivery of Cooperative development assistance proposal element under proposal evaluation criterion number 2, utilizing the specific requirements of Section V.B.2 of this Notice.

9. You should present the Qualifications of Personnel proposal element under proposal evaluation criterion number 9, utilizing the specific requirements of Section V.B.9 of this Notice.

10. You should present the Local Support and Future Support proposal elements under proposal evaluation criterion number 10, utilizing the requirements of Section V.B.10 of this Notice.

11. Your application will not be considered for funding if you do not address all of the proposal evaluation criteria. See Section V.B of this Notice for a description of the proposal evaluation criteria.

f. You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. To satisfy the Certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

g. Awards made under this announcement are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, Public Law 112–55, Division A, Sections 738 and 739 regarding corporate felony convictions and corporate federal tax delinquencies. To comply with these provisions, all applicants must complete the paragraph (1) of this representation, and all corporate applicants also must complete paragraphs (2) and (3) of this representation.

(1) Applicant _____ [INSERT NAME OF APPLICANT] is __ is not __ (check one) an entity that has filed articles of incorporation in one of the fifty states, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, U.S. Virgin Islands. (Note that this includes both for-profit and non-profit organizations.)

If Applicant checked ''is'' above, Applicant must complete paragraphs (2) and (3) of the representation. If Applicant checked ''is not'' above, Applicant may leave the remainder of the representation blank.

(2) Applicant_____ [INSERT NAME OF APPLICANT] has __ has not __ (check one) been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of application. Applicant has __ has not __ (check one) had any officer or agent convicted of a felony criminal violation for actions taken on behalf of Applicant under Federal or State law in the 24 months preceding the date of signature.

(3) Applicant _____ [INSERT NAME OF APPLICANT] has __ does not have __ (check one) any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

h. You must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds are pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, not less than the required amount of matching funds will be expended. Please note that this Certification is a separate requirement from the Verification of Matching Funds requirement. To satisfy the Certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that expenditures of matching funds shall be pro-rated or spent in advance of grant funding, such that for every dollar of the total project cost, at least 25 cents (5 cents for 1994 Institutions) of matching funds will be expended.'' A separate signature is not required.

i. You must provide documentation in your application to verify all of your proposed matching funds. The documentation must be included in Appendix A of your application and will not count towards the 40-page limitation. Template letters are available for each type of matching funds contribution at *http://www.rurdev.usda.gov/BCP-RCDG_Grants.html.*

If matching funds are to be provided in cash, you must meet the following requirements.

- *You:* The application must include a statement verifying (1) the amount of the cash, and (2) the source of the cash.
- *Third-party:* The application must include a signed letter from the third party verifying (1) how much cash will be donated, and (2) that it will be available corresponding to the proposed grant period or donated on a specific date within the grant period.

If matching funds are to be provided by an in-kind donation, you must meet the following requirements.

- *You:* The application must include a signed letter from you or your authorized representative verifying (1) the nature of the goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (i.e., corresponding to the proposed grant period or to specific dates within the grant period), and (3) the value of the goods and/or services.
- *Third-Party:* The application must include a signed letter from the third party verifying (1) The nature of the

goods and/or services to be donated and how they will be used, (2) when the goods and/or services will be donated (i.e., corresponding to the proposed grant period or to specific dates within the grant period), and (3) the value of the goods and/or services.

To ensure that you are identifying and verifying your matching funds appropriately, please note the following:

- If you are paying for goods and/or services as part of the matching funds requirement, the expenditure is considered a cash match, and you should verify it as such.
- You can only consider goods or services for which no expenditure is made as an in-kind contribution.
- If a non-profit or another organization contributes the services of affiliated volunteers, they must follow the third-party, in-kind donation verification requirement for each individual volunteer.
- Expected program income may not be used to fulfill your matching funds requirement at the time you submit your application. However, if you have a contract to provide services in place at the time you submit your application, you can verify the amount of the contract as a cash match.
- The valuation process you use for in-kind contributions does not need to be included in your application, but you must be able to demonstrate how the valuation was derived if you are awarded a grant. The grant award may be withdrawn or the amount of the grant reduced if you cannot demonstrate how the valuation was derived.

D. Submission Dates and Times

Application Deadline Date: August 6, 2012.

Explanation of Deadlines: Complete paper applications must be received in the State Office by the deadline date, 4:00 p.m. local time. Electronic applications submitted through *http://www.grants.gov* will be accepted by the system through midnight eastern time on the deadline date. Your application will not be considered for funding if it does not meet the applicable deadline date and time.

E. Intergovernmental Review of Applications

Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants_spoc.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of the application, our State Offices will submit your application to the SPOC or other appropriate agency or agencies.

F. Environmental Review

Applications for financial assistance are subject to an environmental review. However, if your application is for technical assistance or planning purposes, it is generally excluded from the environmental review process (See 7 CFR 1940.310(e)(1)). We will ensure that any required environmental review is completed prior to approval of an application or obligation of funds.

V. Application Review Information

A. Application and Scoring Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in 7 CFR part 4284, subparts A and F, this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. A recommendation will be submitted to the Administrator to fund applications in highest ranking order. In some cases, applications that cannot be fully funded may be offered partial funding.

B. Scoring Criteria

Scoring criteria will follow criteria published at 7 CFR 4284.513 as supplemented below including any amendments made by the Food, Conservation, and Energy Act of 2008, which is incorporated by reference in this Notice. The regulatory and statutory criteria are clarified and supplemented below. You should also include information as described in Section IV.C.6 (a)–(c). Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion. The maximum amount of points available is 100. Newly established or proposed Centers that do not yet have a track record on which to evaluate the following criteria should refer to the expertise and track records of staff or consultants expected to perform tasks related to the respective criteria. Proposed or newly established Centers must be organized well-enough at time of application to address its capabilities for meeting these criteria.

1. Administrative capabilities (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated track record in carrying out activities in support of development assistance to cooperatively and mutually owned businesses. At a minimum, you must discuss the following administrative capabilities:

a. Financial systems and audit controls;

b. Personnel and program administration performance measures;

c. Clear written rules of governance; and

d. Experience administering Federal grant funding, including but not limited to past RCDG's.

If you discuss the Center's administrative capabilities and track record, versus those of umbrella or supporting institutions, such as universities or parent organizations, you will score higher on this factor.

2. Technical assistance and other services (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated expertise in providing technical assistance and accomplishing effective outcomes in rural areas to promote and assist the development of cooperatively and mutually owned businesses. You must discuss at least:

a. Your potential for delivering effective technical assistance;

b. The types of assistance provided;

c. The expected effects of that assistance;

d. The sustainability of organizations receiving the assistance; and

e. The transferability of your cooperative development strategies and focus to other areas of the U.S.

In addition, if you discuss the demonstrated expertise specific to the Center (as opposed to umbrella or supporting institutions such as universities or parent organizations), you will score higher on this factor.

3. Economic development (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated ability to facilitate:

a. Establishment of cooperatives or mutually owned businesses;

b. New cooperative approaches; and

c. Retention of businesses, generation of employment opportunities or other factors, as applicable, that will otherwise improve the economic conditions of rural areas.

If you provide statistics for historical and potential development and identify your role in economic development

outcomes, you will score higher on this factor.

4. Past performance (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated past performance in establishing legal cooperative business entities and other legal business entities over the most recently completed three year Federal fiscal year period. Documentation verifying the establishment of legal business entities must be included in Appendix C of your application and will not count against the 40-page limit for the narrative. The documentation must include an organizational document from the Secretary of State's Office; or if the business entity is not required to register with the Secretary of State, a certification from the business entity that a legal business entity has been established and when. Centers that have established more legal business entities will score higher on this factor.

5. Networking and regional focus (maximum score of 10 points). A panel of USDA employees will evaluate your demonstrated commitment to:

a. Networking with other cooperative development centers, and other organizations involved in rural economic development efforts, and

b. Developing multi-organization and multi-state approaches to addressing the economic development and cooperative needs of rural areas.

6. Commitment (maximum score of 10 points). A panel of USDA employees will evaluate your commitment to providing technical assistance and other services to under-served and economically distressed areas in rural areas of the United States. If you define and describe the underserved and economically distressed areas within your service area, provide statistics, and identify projects within or affecting these areas, as appropriate, you will score higher on this factor.

7. Matching Funds (maximum score of 10 points). A panel of USDA employees will evaluate your commitment for the 25 percent (5 percent for 1994 Institutions) matching funds requirement. Discussion or a table may be provided to describe all matching funds being committed to the project. However, formal documentation to verify all of the matching funds must be included in Appendix A of your application. If you provide additional matching funds in the form of cash or in-kind match that exceeds the 25 percent matching funds requirement, you will score higher on this factor. If you provide additional matching funds in the form of a cash-only match that exceeds the 25 percent matching funds requirement, you will score highest on this factor.

8. Work Plan/Budget (maximum score of 10 points). A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. Clear, logical, realistic, and efficient plans will result in a higher score. Budgets will be reviewed for completeness and the quality of non-Federal funding commitments. You must discuss at a minimum:

a. Specific tasks (whether it be by type of service or specific project) to be completed using grant and matching funds;

b. How customers will be identified;

c. Key personnel; and

d. The evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations.

The budget must present a breakdown of the estimated costs associated with cooperative and business development activities as well as the operation of the Center and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget.

9. Qualifications of those Performing the Tasks (maximum score of 10 points). A panel of USDA employees will evaluate your application to determine if the personnel expected to perform key tasks have a track record of:

a. Positive solutions for complex cooperative development and/or marketing problems; or

b. A successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to your success as determined by the tasks identified in the your work plan; and

c. Whether the personnel expected to perform the tasks are full/part-time employees of your organization or are contract personnel.

If you demonstrate commitment/availability of qualified personnel expected to perform the tasks, you will score higher on this factor.

10. Local and Future Support (maximum score of 10 points). A panel of USDA employees will evaluate your application for local and future support. Support should be discussed directly within the response to this criterion.

a. Discussion on local support should include previous and/or expected local support and plans for coordinating with other developmental organizations in the proposed service area or with state and local government institutions. If you demonstrate strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations, you will score higher on this factor. You may also submit a maximum of 10 letters of support or intent to coordinate with the application. These letters should be included in Appendix B of your application and will not count against the 40-page limit for the narrative.

b. Discussion on future support will include your vision for funding operations in future years. You should document:

1. New and existing funding sources that support your goals;

2. Alternative funding sources that reduce reliance on Federal, State, and local grants; and

3. The use of in-house personnel for providing services versus contracting out for that expertise.

If you demonstrate vision and likelihood of long-term sustainability with diversification of funding sources and building in-house technical assistance capacity, you will score higher on this factor.

VI. Award Administration Information

A. Award Notices

If your application is successful, you will receive notification regarding funding from the State Office where your application is submitted or headquarter if you submit your application via Grants.gov. You must comply with all applicable statutes, regulations, and notice requirements before the grant award will be approved. If your application is not successful, you will receive notification, including mediation and appeal rights by mail. See 7 CFR part 11 for USDA National Appeals Division procedures.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subparts A and F, Parts 3015, 3019, 3052 and 2 CFR parts 215 and 417. All recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation (See 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Transparency Act reporting requirements (See 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for this program:

- Agency-approved Grant Agreement.
- Letter of Conditions.

• Form RD 1940–1, ''Request for Obligation of Funds.''

• Form RD 1942–46, ''Letter of Intent To Meet Conditions.''

• Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

• Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

• Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants).''

• Form RD 400–4, ''Assurance Agreement.''

• SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

VII. Agency Contacts

If you have questions about this Notice, please contact the State Office as identified in the **ADDRESSES** section of this Notice.

VIII. Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410, Washington, DC 20250–9410, or call toll-free at (866) 632–9992 (English) or (800) 877–8339 (TDD) or (866) 377–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Dated: May 21, 2012.

John C. Padalino,

Acting Administrator, Rural Business Cooperative Service.

[FR Doc. 2012–13833 Filed 6–6–12; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene by conference call at 2:00 p.m. and adjourn at approximately 4:00 p.m. on Monday, July 9, 2012. The purpose of this meeting is to complete the planning of SAC civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 87681036. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4:00 p.m. on July 5, 2012.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by August 9, 2012. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be emailed to *frobinson@usccr.gov* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on June 4, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–13788 Filed 6–6–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–42–2012]

Foreign-Trade Zone 70—Detroit, MI; Expansion of Subzone; Marathon Petroleum Company LP, (Oil Refinery) Detroit, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, requesting an expansion of Subzone 70T, on behalf of Marathon Petroleum Company LP in Detroit, Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 1, 2012.

Subzone 70T was approved by the Board on March 10, 1997 (Board Order 879, 62 FR 13594, 3–21–1997), its NPF authority was extended on August 24, 2000 (Board Order 1116, 65 FR 52696, 8–30–2000), and its capacity was expanded on April 14, 2006 (Board Order 1447, 71 FR 23895, 4–25–2006). The subzone consists of four sites and connecting pipelines in Wayne County, Michigan: Site 1 (183 acres)—main refinery complex located at 1300 South Fort Street on the Detroit River, Detroit and Melvindale; Site 2 (15 acres)—River Rouge Asphalt Terminal located at 301 South Fort Street, 1 mile east of the refinery, Detroit; Site 3 (4 acres)—Fordson Island Barge Dock located at 13150 Powell Street, 2 miles northeast of the refinery, Dearborn; and, Site 4 (44 acres)—Woodhaven Caverns located at 24400 Allen Road, 12 miles south of the refinery, Woodhaven.

The current request involves expanding Site 1 by 22.2 acres to include an adjacent parcel and removing Site 3 from the subzone. The approved scope of authority would remain unchanged.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be

addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 6, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 21, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: June 1, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–13861 Filed 6–6–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC054

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Application for new scientific research permit.

SUMMARY: Notice is hereby given that NMFS has received a scientific research permit application request relating to salmonids listed under the Endangered Species Act (ESA). The proposed research is intended to increase knowledge of the species and to help guide management and conservation efforts. The application and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 575–6097 or fax (707) 578–3435).

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on July 9, 2012.

ADDRESSES: Written comments on this application should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578–3435 or by email to *FRNpermits.SR@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn, Santa Rosa, CA (ph.: 707–575–6097, email: *Jeffrey.Jahn@noaa.gov*). Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*), endangered Central California Coast (CCC) Coho salmon (*O. kisutch*), threatened Southern Oregon/Northern California Coast (SONCC) Coho salmon (*O. kisutch*), threatened Northern California (NC) steelhead (*O. mykiss*), and threatened CCC steelhead (*O. mykiss*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing on the application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Application Received

Permit 14513

Dr. Stephanie Carlson, University of California at Berkeley, is requesting a 5-year permit to take adult, smolt and juvenile CC Chinook salmon, CCC coho salmon, SONCC coho salmon, NC steelhead, and CCC steelhead (ESA-listed salmonids) associated with four research projects in three watersheds in California. In the four studies described below, researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities. However, a low number of moribund CCC steelhead may be collected for analysis as part of Project 3, in Pescadero Lagoon. A notice of receipt for application 14513 was published in the **Federal Register** on December 8, 2010 (75 FR 76400). No comments were received for this application, however due to substantial changes to the sampling locations and the amount taken NMFS decided to publish the revised notice for public comment.

Project 1 is a study on the summer ecology of juvenile salmonids in streams of the Lagunitas Creek (Marin County), Pescadero Creek (San Mateo County), and the South Fork Eel River (Mendocino County) watersheds. The study will examine the variation in growth and survival of juvenile CCC coho salmon, SONCC coho salmon, CCC steelhead and NC steelhead rearing in streams that experience elevated water temperatures and low stream flow volumes in summer. Annually, Dr. Carlson proposes to capture (backpack electrofisher, seine, dip-net), handle (identify, measure and weigh), mark (fin-clip, passive integrated transponder (PIT) tag or elastomer tag), sample (gastric lavage, scale collection), and release juvenile fish. A small number of adults may be captured (backpack electrofisher, seine), handled (identify, measure, weigh), and released. Supplemental surveys will be accomplished by snorkeling. Movements of PIT-tagged fish will be monitored throughout the summer using hand held and stationary PIT-tag readers. In September and October, the study areas will be re-sampled using the same methods as described above. Fish will be scanned for PIT-tags and those recaptured will be re-weighed and measured to determine growth rates. Throughout winter, fish will be monitored for their movements using hand held and stationary PIT-tag readers. Data gathered from this study will provide information on fish growth and survival rates and how these relate to abiotic and biotic variables within the watersheds.

Project 2 is a biotelemetry study of smolt migrations in the Lagunitas Creek and Pescadero Creek watersheds. In the Lagunitas Creek watershed, CCC coho salmon and CCC steelhead smolts will be captured in down migrant traps operated by permitted researchers (the National Park Service and the Marin Municipal Water District). In the Pescadero Creek Watershed, Dr. Carlson proposes to utilize CCC steelhead smolts captured (trap) by other researchers (permits pending); however if trapping is not conducted by others, Dr. Carlson will utilize CCC steelhead smolts captured (seine) associated with Study

3. In both study areas, Dr. Carlson proposes to anesthetize a subset of captured fish and implant acoustic tags in order to determine salmonid residence time and movements throughout the two estuary environments. Captured fish will be measured, tissue sampled (fin-clip), and scale sampled. Strategically placed acoustic receivers will track the movements of the tagged salmonids in each system. Data collected from tagged fish in these systems will be used to determine differences in survival between permanently-open versus seasonally-closed estuaries and the significance of estuary rearing on the timing of ocean entry.

Project 3 is a study on the ecology of juvenile salmonids in Tomales Bay, Pescadero Lagoon, and the Eel River estuary and their overall dependence on estuarine resources based on an analysis of diet and fish growth. In the three estuaries, Dr. Carlson proposes to capture (hook-and-line, seine, fyke net, dip net), handle (identify, measure, weigh), sample (fin-clip, scale collection, gastric lavage), and release ESA-listed salmonid juveniles and smolts. In Pescadero Lagoon, a subset of CCC steelhead smolts will be implanted with PIT tags. A small number of adults will be captured, handled (identified, measured), sampled (scale collection) and released. The data gathered from this project, in addition to Project 2, will provide information on the ecology of juvenile salmonids in estuarine environments, their feeding habits, and how they differ between systems with permanently-open (Tomales Bay, Eel River estuary) versus seasonally-closed (Pescadero Creek lagoon) estuaries/ lagoons.

Project 4 examines smolt production in the Lagunitas Creek, Pescadero Creek, and Eel River watersheds by analyzing collected scales, otoliths, fins, and/or other tissues to determine where smolts that survived to breed as adults reared as juveniles. The samples will be obtained from ESA-listed salmonid carcasses encountered during annual spawner surveys. The results of this project could provide important information on the habitat attributes associated with high productivity areas and could help identify areas of poor productivity that might be candidate sites for habitat restoration.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: June 4, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13854 Filed 6–6–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Stellwagen Bank National Marine Sanctuary Advisory Council: (2) Education Members; (1) Education Alternate; (1) Whalewatching Member; (2) Fixed Gear Commercial Fishing Member and Alternate; (2) Business and Industry Member and Alternate; (2) Diving Member and Alternate; and, (1) Youth Alternate seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's charter.

DATES: Applications are due by July 16, 2012.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov,* Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026, ext. 201. Completed applications should be sent to the same address or email, or faxed to 781–545–8036.

FOR FURTHER INFORMATION CONTACT: Contact *Nathalie.Ward@noaa.gov,* External Affairs Coordinator, telephone: 781–545–8026, ext. 206.

SUPPLEMENTARY INFORMATION: The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 17 voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal government agencies. Since its establishment, the Council has played a vital role in advising the Sanctuary and NOAA and critical issues.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 24, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–13691 Filed 6–6–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA567

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Training Exercises in the Mariana Islands Range Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed renewal of letter of authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for a Letter of Authorization (LOA) to take marine mammals, by harassment, incidental to conducting training exercises within the Navy's Mariana Islands Range Complex (MIRC) in the Pacific Ocean between August 12, 2012 and August 3, 2015. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to issue an LOA to the Navy that includes the use of time delayed firing devices (TDFDs), which have not been explicitly addressed previously, to

incidentally take marine mammals by harassment during the specified activity.

DATES: Comments and information must be received no later than July 9, 2012.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Hopper@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities in the MIRC were published on August 3, 2010 (75 FR 45527) and remain in effect through August 3, 2015. They are codified at 50 CFR 218.100. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's range complex training exercises. For detailed information on these actions, please refer to the August 3, 2010 **Federal Register** notice and 50 CFR 218.100.

A final rule was issued on February 1, 2012 (77 FR 4917) to allow certain flexibilities concerning Navy training activities and allow for multi-year LOAs in 12 range complexes, including MIRC.

Summary of LOA Request

On March 15, 2012, NMFS received a LOA renewal application to take marine mammals incidental to training activities in the MIRC between August 12, 2012 and August 3, 2015. The LOA application included a request from the U.S. Navy for LOA modifications. Specifically, the Navy requests that NMFS modify the LOA to include taking of marine mammals incidental to mine neutralization training using TDFD within the MIRC, along with revised mitigation measures, to ensure that effects to marine mammals resulting from these activities will not exceed what was originally analyzed in the Final Rule for this Range Complex (75 FR 45527). The potential effects of mine neutralization training on marine mammals were comprehensively analyzed in the final regulations for this Range Complex and mine neutralization training has been included in the specified activity in the associated 2010 and 2011 LOAs. However, the use of TDFD and the associated mitigation measures have not been previously contemplated, which is why NMFS believes it is appropriate to provide the proposed modifications to the LOA to the public for review.

On March 4, 2011, three dolphins were suspected to be killed by the Navy's mine neutralization training event using TDFDs in its Silver Strand Training Complex. In short, a TDFD device begins a countdown to a detonation event that cannot be stopped, for example, with a 10-min TDFD, once the detonation has been initiated, 10 minutes pass before the detonation occurs and the event cannot be cancelled during that 10 minutes. Although a previous **Federal Register** notice (76 FR 68734; November 7, 2011) stated that using TDFDs is believed to have likely resulted in the death of five dolphins, further discussion with the Navy and reviewing of reports concerning the incident showed that there is no concrete evidence that more than three dolphins were killed. Following the March 4th event, the Navy initiated an evaluation of mine neutralization events occurring throughout Navy Range Complexes and realized that TDFDs were being used at the VACAPES, JAX, and CHPT Range Complexes. According to the Navy, less than 3% of all MINEX events would not use TDFD. As a result, the Navy subsequently suspended all underwater explosive detonations using TDFDs during training. While this suspension was in place, the Navy worked with NMFS to develop a more robust monitoring and mitigation plan to ensure that marine mammal mortality and injury would not occur during mine neutralization training activities using TDFDs.After the Navy and NMFS developed a monitoring and mitigation plan for mine neutralization activities using TDFDs, the LOAs for VACAPES, JAX, and CHPT Range Complexes were modified and issued to the Navy after public notice and comment (77 FR 2040, January 13, 2012). Because testing and training activities in the MIRC also include mine neutralization using TDFDs, NMFS now engages in a similar process for renewing the LOA for MIRC. The following sections provide detailed descriptions regarding the mine neutralization training activities, the mitigation measures contained in the current LOA, and the Navy's proposed revisions to mitigation measures that are intended to prevent mortality and injury to marine mammals.

The Navy requests the revised LOA remain valid until August 2015. A detailed description of the Navy's LOA modification request can be found on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Description of the Need for Time-Delay Firing Devices in MINEX Training

Overall Operational Mission

Explosive Ordnance Disposal (EOD) personnel require realistic training before conducting high risk, real-world operations. Such real-world operations

include those similar to recent world events requiring movement of assets from sea to land and back to sea. These real-world operations involve non-permissive environments (i.e., mine fields, enemy ships, aircraft, etc.) that require Sailors to carry out their mission undetected and with reduced risk. Proficiency in EOD training generally, and use of TDFDs as described above, specifically, is critical for ensuring the mission of a real-world operation is accomplished safely and Sailors return unharmed. Substitutes to using TDFDs are contradictory to realistic training and are inadequate at satisfying military readiness requirements.

EOD personnel detect, identify, evaluate, neutralize, raise, tow, beach, and exploit mines. Neutralizing an influence mine (e.g., a mine that could be triggered by a magnetic, pressure, or acoustic signature) is an essential part of the EOD Mine Countermeasures (MCM) mission. Neutralization ensures the safety of the men and women of EOD in the recovery and exploitation phase of an influence mine. The EOD mission is typically to locate, neutralize, recover, and exploit mines after they are initially located by another source, such as a MCM or Mine Hunting Class (MHC) ship or an MH–53 or MH–60 helicopter. Once the mine shapes are located, EOD divers are deployed to further evaluate and ''neutralize'' the mine.

During a mine neutralization exercise, if the mine is located on the water's surface, then EOD divers are deployed via helicopter. If the mine is located at depth, then EOD divers are deployed via small boat. The neutralization of mines in the water is normally executed with an explosive device and may involve detonation of up to 20 pounds net explosive weight of explosives. The charge is set with a TDFD since this is the method of detonating the charge in a real-world event.

TDFDs are the safest and most operationally sound method of initiating a demolition charge on a floating mine or mine at depth. TDFDs are used because of their ease of employment, light weight, low magnetic signature, and because they completely eliminate the need to re-deploy swimmers from a helicopter to recover equipment used with positive control firing devices, i.e., detonating the charge without any time-delay. Most importantly, the TDFD also allows EOD personnel to make their way outside of the detonation plume radius/human safety buffer zone.

By using electronic devices as an alternative to a TDFD, such as positive control devices that do not include a delay, additional metal is unnecessarily introduced into an influence ordnance operating environment, which means an environment that includes mines equipped with firing circuits (an ''influence firing circuit'') that may be actuated by magnetic, pressure, or acoustic influences. While positive control devices do allow for instantaneous detonation of the charge, they introduce operationally unsound tactics, thereby increasing risks to the dive team. It is essential that the platoons train like they operate by using TDFDs. In a live mine field, MCM platoons expect there to be additional risks, such as unknown mines with different types of influence firing circuits that can be in close proximity to the mine they are prosecuting. The use of a TDFD reduces these risks by limiting the possibility of unintentionally triggering the influence firing circuits.

A Radio Firing Device (RFD), a type of positive control device, can be used to initiate the charge on a bottom mine, but it is not normally used as a primary firing device due to hazards of electromagnetic radiation to ordnance concerns of the electric detonator, Operational Risk Management (ORM) (i.e., safety) considerations, and established tactical procedures; therefore, they are not considered a practicable alternative.

Adding a positive control firing device to a TDFD as a primary means of detonation is not practicable due to ORM considerations. It is not sound ORM or good demolition practice to combine different firing circuits to a demolition charge. In an open ocean environment this practice would greatly increase the risk of misfire by putting unnecessary stress on all the needed connections and devices (600–1,000 ft of firing wire, an improvised, bulky, floating system for the RFD receiver, 180 ft of detonating cord, and 10 ft TDFD). Underwater demolition needs to be kept as simple and streamlined as possible, especially when divers and influence ordnance are added to the equation. ORM must ensure the safety of Sailors conducting these high risk training evolutions in addition to protection of marine life.

Mine neutralization training, as described in the regulations, involves neutralizing either a simulated mine on the surface or at depth. The ratio between surface detonations and bottom detonations (at depth) for EOD is about 50/50. This is dependent mainly on range availability and weather conditions. During neutralization of a surface mine, EOD divers are deployed and retrieved via helicopter. However, when helicopter assets are unavailable, a small boat is used as is done with neutralization of a mine at depth. During training exercises, regardless of whether a helicopter or small boat is used, a minimum of two small boats participate in the exercise.

For a surface mine neutralization training event involving a helicopter or a boat, the minimum time-delay that is reasonable for EOD divers to make their way outside of the detonation plume radius/human safety buffer zone (typically 1,000 ft (334 yd)) is 10 min. For mine neutralization training events at depth using small boats, the time-delay can be minimized to 5 min. However, this would require the instructors to handle initiation of the detonation and therefore would result in decreased training value for students.

The range area and associated support equipment are required for a 6–8 hour window. Training exercises are conducted during daylight hours for safety reasons.

The Navy proposes to conduct MINEX activities using TDFDs. The number and description of MINEX events would remain otherwise unchanged from the 2011 Request for Letter of Authorization (DoN 2011) for MIRC.

Current and Proposed Modifications to Mitigation and Monitoring Measures Related to Mine Neutralizing Training

Current Mitigation Measures

Current mitigation measures for Demolition and Mine Countermeasure (MCM) training (up to 10 lbs) as required under the August 2011 LOA issued to the Navy in the MIRC included:

(A) *Exclusion Zones:* Explosive charges shall not be detonated if a marine mammal is detected within 700 yards (640 m) of the detonation site.

(B) *Pre-Exercise Surveys:* For MCM training activities, the Navy shall conduct a pre-exercise survey within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air. If a marine mammal is detected within the survey area, the exercise shall be suspended until the animal voluntarily leaves the area.

(C) *Post-Exercise Surveys:* Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(D) *Reporting:* Any evidence of marine mammals injured or killed by the Navy's action shall be reported to NMFS.

(E) *Mine Laying Training:* Though mine laying training operations involve aerial drops of inert training shapes on floating targets, measures A, B, and C for

Demolitions and Mine Countermeasures (above) will apply to mine laying training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

Proposed Modification to Mitigation and Monitoring Measures

NMFS worked with the Navy and developed a series of modifications to improve monitoring and mitigation measures so that take of marine mammals will be minimized and that no risk of injury and/or mortality to marine mammal would result from the Navy's use of TDFD mine neutralization training exercises. The following proposed modifications to the mitigation and monitoring measures are specific to MCM training exercises involving TDFDs conducted within the MIRC.

(A) Visual Observation and Exclusion Zone Monitoring

The estimated potential for marine mammals to be exposed during demolitions and mine countermeasure training events is not expected to change with the use of TDFDs, as the same amount of explosives will be used and the same area ensonified/pressurized regardless of whether TDFDs are involved. This is due to the fact that estimated exposures are based on the probability of the animals occurring in the area when a training event is occurring, and this probability does not change because of a time-delay. However, what does change is the potential effectiveness of the current mitigation that is implemented to reduce the risk of exposure.

The locations selected for mine neutralization training within the MIRC are all close to shore (~3–12 nm) and in shallow water (~10–20 m). Based on the training location, description of the area, and data from recent monitoring surveys, large whales and species that prefer deep or offshore waters are not expected to occur in this area with any regularity. With the potential for protected species to be in the vicinity, the buffer zones need to be revised to further reduce potential impacts to these species when using a TDFD. However, mitigation measures apply to all species and will be implemented if any marine mammal species is sighted.

The rationale used to develop new monitoring zones to reduce potential impacts to marine mammals when using a TDFD is as follows: The Navy has identified the distances at which the sound and pressure attenuate below NMFS injury criteria (i.e., outside of that distance from the explosion, marine mammals are not expected to be injured). Here, the Navy identifies the distance that a marine mammal is likely to travel during the time associated with the TDFD's time delay, and that distance is added to the injury distance. If this enlarged area is effectively monitored, animals would be detected at distances far enough to ensure that they could not swim to the injurious zone within the time of the TDFD. Using an average swim speed of 3 knots (102 yd/min) for a delphinid, the Navy provided the approximate distance that an animal would typically travel within a given time-delay period (Table 1). Based on acoustic propagation modeling conducted as part of the NEPA analyses for this Range Complex, there is potential for injury to a marine mammal within 106 yd of a 5-lb detonation and within 163 yd of a 10-lb detonation. The buffer zones were calculated based on average swim speed of 3 knots (102 yd/min). The specific buffer zones based on charge size and the length of time delays are presented in Table 2.

TABLE 1—POTENTIAL DISTANCE BASED ON SWIM SPEED AND LENGTH OF TIME-DELAY

Species group	Swim speed	Time-delay (min)	Potential distance traveled (yd)
Delphinid	102 yd/min	5	510
		6	612
		7	714
		8	816
		9	918
		10	1,020

TABLE 2—BUFFER ZONE RADIUS (YD) FOR TDFDS BASED ON SIZE OF CHARGE AND LENGTH OF TIME-DELAY

	lb	Time-delay					
		5 min/yd	6 min/yd	7 min/yd	8 min/yd	9 min/yd	10 min/yd
Charge Size	5	616	718	820	922	1,024	1,126
	10	673	775	877	979	1,081	1,183

However, it is possible that some animals may travel faster than the average swim speed noted above, thus there may be a possibility that these faster swimming animals would enter the buffer zone during time-delayed to detonation. In order to compensate for the swim distance potentially covered by faster swimming marine mammals, an additional correction factor was applied to increase the size of the buffer zones radii. Specifically, two sizes of buffer zones are proposed for the ease of monitoring operations based on size of charge (e.g., 5-lb and 10-lb) and length of time-delay, with an additional buffer added to account for faster swim speed. These revised buffer zones are shown in Table 3. As long as animals are not observed within the buffer zones before the time-delay detonation is set, then the animals would be unlikely to swim into the injury zone from outside the area within the time-delay window.

TABLE 3—UPDATED BUFFER ZONE RADIUS (YD) FOR TDFDS BASED ON SIZE OF CHARGE AND LENGTH OF TIME-DELAY, WITH ADDITIONAL BUFFER ADDED TO ACCOUNT FOR FASTER SWIM SPEEDS

	lb	Time-delay					
		5 min/yd	6 min/yd	7 min/yd	8 min/yd	9 min/yd	10 min/yd
Charge Size	5	1,000	1,000	1,000	1,000	1,400	1,400
	10	1,000	1,000	1,000	1,400	1,400	1,400

1,000 yds: Minimum of 2 observation boats.
1,400/1,450 yds: Minimum of 3 observation boats or 2 boats and 1 helicopter.

The current mitigation measure specifies that parallel tracklines will be surveyed at equal distances apart to cover the buffer zone. Considering that the buffer zone for protection of a delphinid may be larger than specified in the current mitigation, a more effective and practicable method for surveying the buffer zone is for the survey boats to position themselves near the mid-point of the buffer zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location surveying both the inner (toward detonation site) and outer (away from detonation site) areas of the buffer zone, with one observer looking inward toward the detonation site and the other observer looking outward. When using 2 boats, each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees. When using more than 2 boats, each boat will be positioned equidistant from one another (120 degrees separation for 3 boats, 90 degrees separation for 4 boats, etc.). Helicopters will travel in a circular pattern around the detonation location when used.

During mine neutralization exercises involving surface detonations, a helicopter deploys personnel into the water to neutralize the simulated mine. The helicopter will be used to search for any marine mammals within the buffer zone. Use of additional Navy aircraft beyond those participating in the exercise was evaluated. Due to the limited availability of Navy aircraft and logistical constraints, the use of additional Navy aircraft beyond those participating directly in the exercise was deemed impracticable. A primary logistical constraint includes coordinating the timing of the detonation with the availability of the aircraft at the exercise location. Exercises typically last most of the day and would require an aircraft to be dedicated to the event for the entire day to ensure proper survey of the buffer zone 30 minutes prior to and after the detonation. The timing of the detonation may often shift throughout the day due to training tempo and other factors, further complicating coordination with the aircraft.

Based on the above reasoning, the modified monitoring and mitigation for visual observation is proposed as the following:

A buffer zone around the detonation site will be established to survey for marine mammals. Events using positive detonation control will use a 700 yd radius buffer zone. Events using time-delay firing devices will use the table below to determine the radius of the buffer zone. Time-delays longer than 10 minutes will not be used. Buffer zones less than 1,400 yds shall use a minimum of 2 boats to survey for marine mammals. Buffer zones greater than 1,400 yds radius shall use 3 boats or 1 helicopter and 2 boats to conduct surveys for marine mammals. Two dedicated observers in each of the boats will conduct continuous visual survey of the buffer zone for marine mammals for the entire duration of the training event. The buffer zone will be surveyed from 30 minutes prior to the detonation and for 30 minutes after the detonation. Other personnel besides the observers can also maintain situational awareness on the presence of marine mammals and sea turtles within the buffer zone to the best extent practical given dive safety considerations. If available, aerial visual survey support from Navy helicopters can be utilized, so long as to not jeopardize safety of flight.

When conducting the survey, boats will position themselves at the mid-point of the buffer zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location surveying both the inner (toward detonation site) and outer (away from detonation site) areas of the buffer zone. To the extent practicable, boats will travel at 10 knots to ensure adequate coverage of the buffer zone. When using 2 boats in a less than 1,400 yds buffer zone, each boat will be positioned on opposite sides of the detonation location at 500 yds from the detonation point, separated by 180 degrees. When using 3 boats in a 1,400 yds or greater buffer zone, each boat will be positioned equidistant from one another (120 degrees separation) at 700 yds respectively from the detonation point. Helicopter pilots will use established Navy protocols to determine the appropriate pattern (e.g., altitude, speed, flight path, etc.) to search and clear the buffer zone of turtles and marine mammals.

(B) Mine neutralization training shall be conducted during daylight hours only.

(C) Maintaining Buffer Zone for 30 Minutes Prior to Detonation and Suspension of Detonation

Visually observing the mitigation buffer zone for 30 min prior to the detonation allows for any animals that may have been submerged in the area to surface and therefore be observed so that mitigation can be implemented. Based on average dive times for the species groups that are most likely expected to occur in the areas where mine neutralization training events take place, (i.e., delphinids), 30 minutes is an adequate time period to allow for submerged animals to surface. Allowing a marine mammal to leave of their own volition if sighted in the mitigation buffer zone is necessary to avoid harassment of the animal.

It is not possible to suspend the detonation after a TDFD is initiated due to safety risks to personnel. Therefore, the portion of the measure that requires suspension of the detonation cannot be implemented when using a TDFD and should be removed, noting that revised mitigation measures will make it unnecessary to have to suspend detonation within the maximum of ten minutes between setting the TDFD and detonation.

Based on the above reasoning, the modified monitoring and mitigation for pre-detonation observation is proposed as the following:

If a marine mammal is sighted within the buffer zone, the animal will be allowed to leave of its own volition. The Navy will suspend detonation exercises and ensure the area is clear for a full 30 minutes prior to detonation.

When required to meet training criteria, time-delay firing devices with

up to a 10 minute delay may be used. The initiation of the device will not start until the area is clear for a full 30 minutes prior to initiation of the timer.

(D) The requirement in the current LOA that ''no detonation shall be conducted using time-delayed devices'' is proposed to be deleted as the improved monitoring and mitigation measures will minimize the potential impacts to marine mammals and greatly reduce the likelihood of injury and/or mortality to marine mammals using TDFDs.

The availability of additional technological solutions that would enable suspension of the detonation when using a TDFD was evaluated. Currently there are no devices that would stop the timer if a marine mammal was sighted within the buffer zone after initiation of the timer.

The Navy states that procurement of new technology can take many years to be fielded. Joint service procurement can take approximately 3 years, with an additional 6 months when an item needs to go through the WSESRB (Weapon System Explosive Safety Review Board). For example, the Acoustic Firing System (AFS) has been in development for 10 years. It was fielded ''as is'' to the Fleet in 2011, with the understanding that it has not met the minimum standards put forth. Once fielded, it will remain in the Product Improvement Process (PIP), which can take up to five years to have a finished product. This AFS will not be considered a true positive control firing device because current technology prevents a shorter time-delay than one minute in the firing cycle.

In 2012 another Radio Firing Device (RFD) will be fielded to the Fleet through a new program called the Special Mission Support Program. This RFD has a disposable receiver that can function in an Electronic Counter Measure (ECM) environment. Navy will evaluate and consider the use of the AFS and the new RFD for potential use as mitigation once they are fielded, but currently they are not options that can be implemented. Without further evaluation, it is not clear whether the new RFD could be used to replace TDFD at this moment.

(E) Diver and Support Vessel Surveys

The Navy recommends, and NMFS concurs, revising this measure to clarify that it applies to divers only. The intent of the measure is for divers to observe the immediate, underwater area around the detonation site for marine mammals while placing the charge.

The modified mitigation measures is provided below:

Divers placing the charges on mines will observe the immediate, underwater area around the detonation site for marine mammals and will report any sightings to the surface observers.

(F) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the zone of influence (ZOI).

Take Estimates

There is no change for marine mammal take estimates from what were analyzed in the final rule (75 FR 45527, August 3, 2010) for mine neutralization training activities in all this Range Complex. Take estimates were based on marine mammal densities and distribution data in the action area, computed with modeled explosive sources and the sizes of the buffer zones.

The Comprehensive Acoustic System Simulation/Gaussian Ray Bundle (OAML, 2002) model, modified to account for impulse response, shock-wave waveform, and nonlinear shock-wave effects, was run for acoustic-environmental conditions derived from the Oceanographic and Atmospheric Master Library (OAML) standard databases. The explosive source was modeled with standard similitude formulas, as in the Churchill FEIS. Because all the sites are shallow (less than 50 m), propagation model runs were made for bathymetry in the range from 10 m to 40 m.

Estimated zones of influence (ZOIs; defined as within which the animals would experience Level B harassment) varied with the explosive weights, however, little seasonal dependence was found in MIRC. Generally, in the case of ranges determined from energy metrics, as the depth of water increases, the range shortens. The single explosion TTS-energy criterion (182 dB re 1 microPa^2-sec) was dominant over the pressure criteria and therefore used to determine the ZOIs for the Level B exposure analysis.

The total ZOI, when multiplied by the animal densities and total number of events, provides the exposure estimates for that animal species for each specified charge in the MIRC (Table 4). Take numbers were estimated without considering marine mammal monitoring and mitigation measures, therefore, the additional monitoring and mitigation measures and the use of TDFD for mine neutralization training would not change the estimated takes from the original final rule for MIRC (75 FR 45527, August 3, 2010).

TABLE 4—ESTIMATED TAKES OF MARINE MAMMALS THAT COULD RESULT FROM MCM TRAINING

Species	Potential exposures @ 182 dB re 1 μPa^2-s or 23 psi	Potential exposures @ 205 dB re 1 μPa^2-s or 13 psi	Potential exposures @ 30.5 psi
Cuvier's beaked whale	2	0	0
Dwarf/Pygmy sperm whale	2	0	0
Fraser's dolphin	2	0	0
Melon-headed whale	2	0	0
Pantropical spotted dolphin	2	0	0
Risso's dolphin	4	0	0

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to

base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The aforementioned additional mitigation and monitoring measures will increase the buffer zone to account for marine mammal movement and increase marine mammal visual monitoring efforts to ensure that no marine mammal would be in a zone where injury and/or mortality could occur as a result of time-delayed detonation.

In addition, the estimated exposures are based on the probability of the animals occurring in the area when a training event is occurring, and this probability does not change based on the use of TDFDs or implementation of mitigation measures (i.e., the exposure model does not account for how the charge is initiated and assumes no mitigation is being implemented). Therefore, the potential effects to marine mammal species and stocks as a result of the proposed mine neutralization training activities are the same as those analyzed in the final rules governing the incidental takes for these activities. Consequently, NMFS believes that the existing analyses in the final rules do not change as a result of the proposed LOA to include mine neutralization training activities using TDFDs.

Further, there will be no increase of marine mammal takes as analyzed in previous rules governing NMFS issued incidental takes that could result from the Navy's training activities within these Range Complexes by using TDFDs.

Based on the analyses of the potential impacts from the proposed mine countermeasure training exercises conducted within the MIRC, especially on the proposed improvement on marine mammal monitoring and mitigation measures, NMFS has preliminarily determined that the modification of the Navy's current LOA to include taking of marine mammals incidental to mine neutralization training using TDFD within the MIRC will have a negligible impact on the marine mammal species and stocks present in these action areas, provided that additional mitigation and monitoring measures are implemented.

ESA

There are five marine mammal species that are listed as endangered under the ESA with confirmed or possible occurrence in the MIRC: Humpback whale, blue whale, fin whale, sei whale, and sperm whale.

Pursuant to Section 7 of the ESA, NMFS has begun consultation internally on the issuance of the modified LOAs under section 101(a)(5)(A) of the MMPA for these activities. Consultation will be concluded prior to a determination on the issuance of the modified LOAs.

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statements (FEIS's) for the MIRC. NMFS subsequently adopted the Navy's EIS's for the purpose of complying with the MMPA. For the modification of the LOA, which include TDFDs, but also specifically add monitoring and mitigation measures to minimize the likelihood of any additional impacts from TDFDs, NMFS has determined that there are no changes in the potential effects to marine mammal species and stocks as a result of the proposed mine neutralization training activities using TDFDs. Therefore, no additional NEPA analysis will be required, and the information in the existing EIS's remains sufficient.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS preliminarily finds that the total taking from Navy mine neutralization training exercises utilizing TDFDs in the MIRC will have a negligible impact on the affected marine mammal species or stocks. NMFS has proposed issuing the modified LOA to allow takes of marine mammals incidental to the Navy's mine neutralization training exercises using TDFDs, provided that the proposed improvements to the monitoring and mitigation measures are implemented.

Dated: June 1, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13852 Filed 6–6–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, June 13, 2012, 10 a.m.–11 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Briefing Matter: Play Yards—Final Rule.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 5, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–13970 Filed 6–5–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. USA–2007–0014]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 9, 2012.

Title and OMB Number: Assessing Human Response to Military Impulse Noise; OMB Control Number 0710–TBD.

Type of Request: Reinstatement.

Number of Respondents: 958.

Responses per Respondent: 15.64.

Annual Responses: 14,983.

Average Burden per Response: 0.0792 hours.

Annual Burden Hours: 1,187.

Needs and Uses: This information collection requirement is necessary to obtain information on the relationship between community annoyance and complaints, related to impulsive noise from military installations. The

information will provide the necessary tools and guidance for military installations to effectively balance the need for training operations at military installations with public safety and welfare.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 30, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–13790 Filed 6–6–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Disability and Rehabilitation Research Projects and Centers Program; National Data and Statistical Center for the Burn Model Systems

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research Projects (DRRPs)—National Data and Statistical Center for the Burn Model Systems (National BMS Data Center);

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–4.

Dates:

Applications Available: June 7, 2012.

Date of Pre-Application Meeting: June 28, 2012.

Deadline for Transmittal of Applications: August 6, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPS)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. Additionally information on DRRPs can be found at: *www.ed.gov/rschstat/research/pubs/res-program.*

Priority: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General DRRP Requirements* priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *National Data and Statistical Center for the Burn Model Systems (National BMS Data Center)* priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *National Data and Statistical Center for the Burn Model Systems (National BMS Data Center).*

Note: The full text of these priorities is included in the pertinent notice of final priority published in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $350,000.

Maximum Award: We will reject any application that proposes a budget exceeding $350,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133A–4.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• 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.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: June 7, 2012.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on June 28, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact either Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 6, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* 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 one of the individuals 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in 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 annually. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the *National Data and Statistical Center for the Burn Model Systems (National BMS Data Center),* CFDA number 84.133A–4, 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 National BMS Data Center competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

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 competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format only. 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: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140 PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133A–4) 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 84.133A–4), 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.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you

receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

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: Lynn Medley or Marlene Spencer as follows:

Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.*

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD or a 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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at 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 of this site, you can limit your search to documents published by the Department.

Dated: June 4, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–13863 Filed 6–6–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Disability and Rehabilitation Research Projects and Centers Program—National Data and Statistical Center for the Burn Model Systems

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

CFDA Number: 84.133A–4.

Final priority; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—National Data and Statistical Center for the Burn Model Systems.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces a priority for a National Data and Statistical Center for the Burn Model Systems (National BMS Data Center). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2012 and later years. We take this action to focus research attention on areas of national need.

DATES: *Effective Date:* This priority is effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *lynn.medley@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.

SUPPLEMENTARY INFORMATION: This notice of final priority (NFP) is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and

training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice, and (6) disseminate findings.

This notice announces a final priority that NIDRR intends to use for a DRRP competition in FY 2012 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program

The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, and promote the employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of DRRPs, which are funded under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. Additional information on DRRPs can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on March 7, 2012 (77 FR 13575). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, six parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: With regard to paragraph (a) of the priority, one commenter suggested that NIDRR specify that the database be accessible to analysts using a variety of computer operating systems and data analysis software programs.

Discussion: NIDRR agrees with the commenter. To promote widespread use of the BMS Database, we have modified the priority as suggested.

Changes: We have added a sentence to paragraph (a) of the priority to state that the database must be accessible to researchers and analysts using a variety of computer operating systems and data analysis software programs.

Comment: With regard to paragraph (e) of the priority, one commenter recommended that NIDRR require the National BMS Data Center to collaborate with the American Burn Association (ABA) to facilitate synergies between and outcomes of, the national longitudinal Burn Model Systems (BMS) database and the database maintained by the ABA.

Discussion: NIDRR agrees with the commenter that collaboration between the National BMS Data Center and the ABA may lead to improved outcomes of the BMS Database. Paragraph (e) of the priority requires the grantee to pursue strategies to improve efficiency of the BMS Database, including collaborations with the National Data and Statistical Center for Traumatic Brain Injury Model Systems, the National Data and Statistical Center for Spinal Cord Injury Model Systems, and the Model Systems Knowledge Translation Center (MSKTC). Applicants may propose to collaborate with the ABA to carry out any number of strategies to achieve this outcome. We believe that providing applicants with the flexibility to collaborate with the ABA is preferable to requiring that all applicants propose to collaborate with the ABA.

Changes: In paragraph (e), NIDRR has clarified that it seeks improved efficiency of the BMS Database operations through collaborations between the National BMS Data Center and other entities, including those entities that maintain large databases with information about the experiences and outcomes of individuals with disabilities. NIDRR has added the American Burn Association to the list of possible collaborators in paragraph (e) of the priority.

Comment: One commenter asked whether the BMS Centers funded under the BMS Centers priority would be engaged in a collaborative research project and, if so, whether applicants under the National BMS Data Center priority should plan to provide statistical and other methodological consultation to this collaborative project.

Discussion: Grantees under the proposed BMS Centers priority will not engage in a collaborative research project. Therefore, applicants under the BMS National Data and Statistical Center do not need to propose support for such a project.

Changes: None.

Comment: One commenter asked whether the grantee under this priority will be required to participate in the state-of-the-science conference that is described in the BMS Centers priority or in the Project Directors' meetings for the BMS Centers. The commenter asked whether applicants applying under this priority should budget for the costs of travel and attendance at the conference and meetings.

Discussion: The BMS Centers priority, announced in a separate notice of final priority, no longer includes a requirement that the BMS Centers budget to support a state-of-the-science conference. Thus, the National BMS Data Center is not required to budget for participation in a state-of-the-science conference. The BMS Centers priority does, however, include a requirement for grantees to participate in BMS Centers Project Directors' meetings. We believe that participation in the BMS Centers Project Directors' meetings by representatives of the National BMS Data Center is critical because those meetings include discussion and oversight of data collection policies and procedures, possible changes to variables collected by the BMS Centers, threats to data quality and possible solutions, as well as reports on the Centers' follow-up rates and missing

data rates. For this reason, we are revising this priority to require that the National BMS Data Center ensure that its Project Director participates in two annual face-to-face BMS Center Project Directors' meetings.

Change: NIDRR has added language to the priority to require that the National BMS Data Center ensure that its Project Director participates in two annual face-to-face BMS Center Project Directors' meetings, one of which will take place in the greater Washington, DC area and once in conjunction with the annual ABA Convention.

Final Priority

Priority—National Data and Statistical Center for the Burn Model Systems

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a National Data and Statistical Center for the Burn Model Systems (National BMS Data Center). The National BMS Data Center must advance medical rehabilitation by increasing the rigor and efficiency of scientific efforts to assess the experiences and outcomes of individuals with burn injury. To meet this priority, the National BMS Data Center's research and technical assistance must be designed to contribute to the following outcomes:

(a) Maintenance of a national longitudinal database (BMS Database) for data submitted by each of the Burn Model Systems Centers (BMS Centers). This database must provide confidentiality, quality control, and data-retrieval capabilities, using cost-effective technology and user-friendly interfaces. The database must be accessible to researchers and analysts using a variety of computer operating systems and data analysis software programs.

(b) High-quality, reliable data in the BMS Database. The National BMS Data Center must contribute to this outcome by providing training and technical assistance to BMS Centers on subject retention and data collection procedures, data entry methods, and appropriate use of study instruments, and by monitoring the quality of the data submitted by the BMS Centers.

(c) High-quality data collected from database participants of all racial and ethnic backgrounds. The National BMS Data Center must contribute to this outcome by providing knowledge, training, and technical assistance to the BMS Centers on culturally appropriate methods of longitudinal data collection and participant retention.

(d) Rigorous research conducted by BMS Centers and investigators from outside of the BMS network who are analyzing data from the BMS Database. The National BMS Data Center must contribute to this outcome by making statistical and other methodological consultation available for research projects that use the BMS Database, as well as site-specific research projects being conducted by the BMS Centers.

(e) Improved efficiency of the BMS Database operations. The National BMS Data Center must contribute to this outcome by collaborating with other entities, including those that maintain large databases with information about the experiences and outcomes of individuals with disabilities. These entities may include, but are not limited to the National Data and Statistical Center for Traumatic Brain Injury Model Systems, the National Data and Statistical Center for Spinal Cord Injury Model Systems, the Model Systems Knowledge Translation Center (MSKTC), and the American Burn Association.

(f) Improved reports for the public from the BMS Database. The National BMS Data Center must produce a report based on the BMS Database at least once a year that provides basic demographic, epidemiological, and outcome information about burn survivors. The National BMS Data Center must collaborate with the MSKTC to distribute information about burn injury and burn rehabilitation to the public through a NIDRR-funded Web site and other media.

To facilitate these outcomes, the National BMS Data Center must ensure that its Project Director participates in two annual face-to-face BMS Center Project Directors' meetings. One of these annual meetings will take place in the greater Washington, DC area and one in conjunction with the annual American Burn Association Convention.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of the final priority is that establishing a new DRRP will improve the lives of individuals with disabilities. The new DRRP will provide support and assistance for NIDRR grantees as they generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://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: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 4, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–13858 Filed 6–6–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: ED, Institute of Education Sciences, U.S. Department of Education.

ACTION: Notice of an Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the meeting.

DATES: June 20, 2012. Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: 80 F Street NW., Room 100, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Monica Herk, Executive Director, National Board for Education Sciences, 555 New Jersey Ave. NW., Room 602 K, Washington, DC, 20208; phone:(202) 208–3491; fax: (202) 219–1466; email: *Monica.Herk@ed.gov.*

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002 (ESRA), 20 U.S.C 9516. The Board advises the Director of the Institute of Education Sciences (IES) on, among other things, the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On June 20, 2012, starting at 8:30 a.m., the Board will approve the agenda and hear remarks from the chair. John Easton, IES Director, and the Commissioners of the national centers will give an overview of recent developments at IES.

From 9:30 to 10:45 a.m., Board members will discuss the topic, ''Communicating Research Effectively to Diverse Audiences''. Rebecca Maynard, Commissioner of the National Center on Education Evaluation and Regional Assistance, will provide an update on the *What Works Clearinghouse* Web site, followed by a presentation by John Hutchins, Communications Director at MDRC, about MDRC's approach to communicating research findings. A break will take place from 10:45 to 11:00 a.m.

From 11:00 a.m. to 12:15 p.m., the Board will consider the topic, ''Recent Research on Instructional Quality''. Following opening presentations by Douglas Staiger of Dartmouth University and by Helen Ladd of Duke University, Board members will engage in roundtable discussion of the issues raised. The meeting will break for lunch from 12:15 to 12:45 p.m.

At 12:45 p.m. Board members will travel to 400 Maryland Avenue SW. in Washington, DC in order for four recently appointed Board members—

David Chard, Adam Gamoran, Judith Singer, and Hirokazu Yoshikawa—to be sworn in by Secretary of Education Arne Duncan at 1:30 p.m.

Following its return from the swearing-in ceremony, the Board meeting will resume from 2:15 to 3:30 p.m. to discuss the topic, ''IES's Peer Review Process: Review Panel Criteria, Recruitment, and Training''. After opening remarks by Anne Ricciuti, IES's Deputy Director for Science, the Board will engage in roundtable discussion of the topic. An afternoon break will occur from 3:30 to 3:45 p.m.

From 3:45 to 4:45 p.m., the Board will discuss the recommendations of the May 2008 Board regarding reauthorization of the Education Sciences Reform Act. The Board will also discuss a draft Scientific Integrity Policy proposed for the U.S. Department of Education.

At 4:45 p.m., there will be closing remarks and a consideration of next steps from the IES Director and NBES Chair, with adjournment scheduled for 5:00 p.m.

There will not be an opportunity for public comment. However, members of the public are encouraged to submit written comments related to NBES to Monica Herk (see contact information above). A final agenda is available from Monica Herk (see contact information above) and is posted on the Board Web site *http://ies.ed.gov/director/board/agendas/index.asp.* Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Monica Herk no later than June 6. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Board proceedings and are available for public inspection at 555 New Jersey Ave. NW., Room 602 K, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may 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) on the Internet at the following site: *www.ed.gov/news/fed-register/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC, area at (202) 512–0000.

Note: 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 on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2012–13884 Filed 6–6–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0893; FRL–9680–9]

Regulation of Fuel and Fuel Additives: Modification to Octamix Waiver (TXCeed)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has reconsidered a portion of a fuel waiver that was granted to the Texas Methanol Corporation (Texas Methanol) under the Clean Air Act on February 8, 1988. This waiver was previously reconsidered and modified on October 28, 1988, in a **Federal Register** publication titled ''Fuel and Fuel Additives; Modification of a Fuel Waiver Granted to the Texas Methanol Corporation.'' Today's notice approves the use of an alternative corrosion inhibitor, TXCeed, in Texas Methanol's gasoline-alcohol fuel, OCTAMIX.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–HQ–OAR–2011–0893. All documents and public comments in the docket are listed on the *http://www.regulations.gov* Web site. Publically available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA Headquarters Library, Mail Code: 2822T, EPA West Building, 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 holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1742, and the facsimile number for the Air Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice contact, Joseph R. Sopata, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality, (202) 343–9034, fax number, (202) 343–2800, email address: *sopata.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (CAA or the Act) makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. The Environmental Protection Agency (EPA or the Agency) last issued an interpretive rule on the phrase ''substantially similar'' at 73 FR 22281 (April 25, 2008). Generally speaking, this interpretive rule describes the types of unleaded gasoline that are likely to be considered ''substantially similar'' to the unleaded gasoline utilized in EPA's certification program by placing limits on a gasoline's chemical composition as well as its physical properties, including the amount of alcohols and ethers (oxygenates) that may be added to gasoline. Fuels that are found to be ''substantially similar'' to EPA's certification fuels may be registered and introduced into commerce. The current ''substantially similar'' interpretive rule for unleaded gasoline allows no more than 2.7 percent oxygen by weight for certain ethers and alcohols.

Section 211(f)(4) of the Act provides that upon application of any fuel or fuel additive manufacturer, the Administrator may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that the fuel or fuel additive, or a specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to sections 206 and 213(a) of the Act. The statute requires that the Administrator shall take final action to grant or deny an application after public notice and comment, within 270 days of receipt of the application.

The Texas Methanol Corporation received a waiver under CAA section 211(f)(4) for a gasoline-alcohol fuel

blend, known as OCTAMIX,[1] provided that the resultant fuel is composed of a maximum of 3.7 percent by weight oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume co-solvents [2] and 42.7 milligrams per liter (mg/l) of Petrolite TOLAD MFA–10 corrosion inhibitor [3]. In the OCTAMIX waiver, the Agency invited other corrosion inhibitor manufacturers to submit test data to establish, on a case-by-case basis, whether their fuel additive formulations are acceptable as alternatives to TOLAD MFA–10.[4]

On March 23, 2011, Spirit of 21st Century LLC requested EPA allow the use of its alternative corrosion inhibitor, TXCeed, in the OCTAMIX gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver.[5] Spirit of 21st Century LLC subsequently followed up its March 23 request with additional information on May 17, 2011, July 6, 2011 and August 15, 2011.[6] [7] [8] TXCeed is a fuel additive formulation consisting of a corrosion inhibitor.

On December 14, 2011, EPA published a notice in the **Federal Register** (76 FR 77828) announcing receipt of Spirit of 21st Century LLC's request and inviting comment on it. The comment period closed on January 13, 2012. There were no public comments submitted to the Agency in response to the notice published on December 14, 2011.

II. Discussion

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility data could show a potential failure of fuel systems, emissions related parts and emission control parts from use of the fuel or fuel additive. Any failure could result in greater emissions that would cause or contribute to the engines or vehicles exceeding their emissions standards. Initially, Texas Methanol requested the use of TOLAD MFA–10 or an appropriate concentration of any other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineer's TM–01–72 (NACE RUST TEST). However, EPA concluded that compliance with the NACE Rust Test alone was not adequate in determining suitability of a corrosion inhibitor for use under the OCTAMIX waiver.[9] The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation would be acceptable as an alternative to the formulation of the original corrosion inhibitor, TOLAD MFA–10, used in the OCTAMIX waiver.[10]

In order to determine whether the OCTAMIX waiver would meet the criteria of section 211(f) if TXCeed were to be used as an alternative corrosion inhibitor, EPA reviewed all data submitted with or referenced by the Spirit of 21st Century LLC application. Spirit of 21st Century LLC provided data showing their corrosion inhibitor, TXCeed, met ASTM [11] and NACE [12] corrosion test results, as well as physical property information.

TXCeed is a fuel additive mixture of naturally occurring triglyceride oils and terpenes that purports to eliminate the corrosion tendencies of alcohols. While both TOLAD MFA–10 and DMA–67 were only evaluated with respect to their corrosion inhibitor efficacy under the NACE corrosion test, TXCeed was evaluated and passed the most current NACE corrosion test and two additional corrosion tests, the ASTM silver and copper corrosion tests.[13] Moreover, TXCeed was evaluated on the most aggressive fuel formulation of alcohols allowed under the OCTAMIX waiver,[14] which is an OCTAMIX fuel formulation that included only methanol at 5 volume percent and ethanol at 2.5 volume percent. The use of higher molecular weight cosolvent alcohols, such as propanols or butanols, would tend to be less corrosive. Since TXCeed passed the most current NACE corrosion test and the ASTM silver and copper corrosion tests using the most aggressive fuel formulation allowed under the OCTAMIX waiver, the Agency believes that Spirit of 21st Century LLC has met the burden of showing that it is an effective corrosion inhibitor for use under the OCTAMIX waiver.

With regard to the question of the emissions impacts of TXCeed, Table 1 compares the physical properties (including the treat rate) of TXCeed to a previously approved corrosion inhibitor under the OCTAMIX waiver, DMA–67. Normally we would compare the physical properties of the new corrosion inhibitor (TXCeed) to the physical properties of the corrosion inhibitor previously approved under the waiver (TOLAD MFA–10). In this instance, the physical property information for TOLAD MFA–10 is no longer available, so we are comparing the physical properties of TXCeed with the physical properties of an alternative corrosion inhibitor previously approved under the OCTAMIX waiver, DMA–67. TXCeed is added at about 30 times more than that of DMA–67, has a similar specific gravity, and a much improved ash content performance. Although TXCeed's flash point and viscosity are larger than DMA–67, TXCeed's chemical composition and treat rate of less than 0.1 mass percent by weight is such that it is a fuel additive falling under the baseline gasoline fuel grouping category [15] under our fuel and fuel additive registration regulations. In addition, TXCeed's chemical composition and treat rate is such that it meets our substantially similar definition [16]. Given that TXCeed is a fuel additive that is both substantially similar to the fuel additives used in our certification program and a fuel additive falling under the baseline gasoline fuel category, one would not expect significant emissions changes from the use of TXCeed compared to other fuel additives that fall under the baseline gasoline fuel category, which also includes TOLAD MFA–10 and DMA–67. Therefore, as long as the other conditions of the OCTAMIX waiver are met, which include applicable gasoline volatility specifications,[17] gasoline

[1] OCTAMIX waiver decision, 53 FR 3636 (February 8, 1988).

[2] The co-solvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols with the following constraints: the ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 percent by weight of the co-solvent mixture; a maximum limit of 40 percent by weight of the co-solvents mixture is placed on the pentanols, hexanols, heptanols and octanols; and the heptanols and octanols are limited to 5 percent by weight of the co-solvent mixture.

[3] Additional conditions were the final fuel must meet ASTM volatility specifications contained in ASTM D439–85a, as well as phase separation conditions specified in ASTM D–2 Proposal P–176 and Texas Methanol alcohol purity specifications.

[4] 53 FR 3637.

[5] EPA–HQ–OAR–2011–0893–03.

[6] EPA–HQ–OAR–2011–0893–004.

[7] EPA–HQ–OAR–2011–0893–006.

[8] EPA–HQ–OAR–2011–0893–005.

[9] 53 FR 3637.

[10] 53 FR 3637.

[11] ASTM D130–04^{e1} and ASTM D4814–10a.

[12] NACE Standard TM0172–2001.

[13] See EPA–HQ–OAR–2011–0893–0003.

[14] The co-solvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols with the following constraints: the ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60 percent by weight of the co-solvent mixture; a maximum limit of 40 percent by weight of the co-solvents mixture is placed on the pentanols, hexanols, heptanols and octanols; and the heptanols and octanols are limited to 5 percent by weight of the co-solvent mixture.

[15] See 40 CFR 79.56(e)(3)(i).

[16] For our most recent substantially similar gasoline interpretative rule, please see: *http://www.epa.gov/fedrgstr/EPA-AIR/2008/April/Day-25/a8944.pdf.*

[17] See 40 CFR 80.27 for applicable volatility specifications for conventional gasoline, or 40 CFR part 80 subpart D for reformulated gasoline requirements, or any applicable state implementation plan approved by EPA that includes low RVP fuel.

phase separation specifications [18] and alcohol purity conditions,[19] the Agency believes that the use of TXCeed in place of TOLAD MFA–10 will allow engines and vehicles to remain compliant with their emissions standards when using fuels made as approved under the original conditions granted for the OCTAMIX waiver.

TABLE 1—PHYSICAL PROPERTIES OF DMA–67 AND TXCEED

Physical Properties	DMA–67	TXCeed
Treat Rate (mg/liter)	31.4	987.6
Physical Form	Clear Amber Liquid	Liquid [20]
Specific Gravity 60/60 °F	0.93	0.9662
Flash Point, PMCC, °F	64 °F	230 °F
Ash Content, weight percent	<0.1	<0.0001
Viscosity, cSt @0 °F	663	19210
Viscosity, cSt @32 °F	180	3220
Viscosity, cST @100 °F	30	151

[20] According to Spirit of 21st Century LLC, the color of the liquid is dependent on the clarity of the chemical components comprised in fuel additive formulation of TXCeed.

III. Finding and Conclusion

Based on the information submitted by Spirit of 21st Century LLC in its application, I conclude that the performance of TXCeed in OCTAMIX would be comparable to TOLAD MFA–10 and DMA–67. Therefore, I am modifying condition (3) of the OCTAMIX waiver to read as follows:

(3) Any one of the following three corrosion inhibitors must be included:

(a) Petrolite's corrosion inhibitor formulation, TOLAD MFA–10, blended in the final fuel at 42.7 mg/l;

OR

(b) DuPont's corrosion inhibitor formulation, DMA–67, blended in the final fuel at 31.4 mg/l;

OR

(c) Spirit of 21st Century LLC's corrosion inhibitor formulation, TXCeed, blended in the final fuel at 3.9 ml/gal (987.6 mg/l).

This action should provide additional flexibility to any manufacturer wishing to produce the OCTAMIX blend. At the same time, any manufacturer wishing to use a corrosion inhibitor other than the three permitted by the OCTAMIX waiver must apply for a further modification of the waiver. Since EPA is still unaware of any basis for extrapolating findings in the emissions impact of one inhibitor to other inhibitors, the Agency will continue to examine the emissions impact of specific corrosion inhibitor formulations on a case-by-case basis.

IV. Miscellaneous

This waiver modification decision is final agency action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by August 6, 2012. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

Dated: May 31, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–13823 Filed 6–6–12; 8:45 am]

BILLING CODE 6560–50–P

[18] See American Society for Testing and Materials (ASTM) D4814 for applicable gasoline phase separation conditions.

[19] Additional conditions were the final fuel must meet ASTM volatility specifications contained in ASTM D439–85a, as well as phase separation conditions specified in ASTM D–2 Proposal P–176 and Texas Methanol alcohol purity specifications. Since the time that the OCTAMIX waiver was granted, ASTM D4814 has superceded ASTM volatility specifications contained in ASTM D439–85a and the phase separation conditions specified in ASTM D–2 Proposal P–176.

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standard 43

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 43, *Dedicated Collections: Amending SFFAS 27, Identifying and Reporting Earmarked Funds.*

The Standard is available on the FASAB home page *http://www.fasab.gov/standards.html.*

Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: June 1, 2012.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2012–13785 Filed 6–6–12; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning 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 August 6, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0441.

Title: Section 90.621(b(4) and (b)(5), Selection and Assignment of Frequencies.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 20 respondents; 20 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i) and 309(j).

Total Annual Burden: 30 hours.

Total Annual Cost: $2,000.

Privacy Impact Assessment: N/A.

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 them. There are no changes to the reporting and/or recordkeeping requirements. The Commission is reporting no change to their 2009 burden estimates.

Section 90.621(b)(4) allows stations to be licensed at distances less than those prescribed in the Short-Spacing Separation Table where applicants ''secure a waiver.'' Applicants seeking a waiver in these circumstances are still required to submit with their application an interference analysis, based upon any of the generally-accepted terrain-based propagation models, demonstrating that co-channel stations would receive the same or greater interference protection than provided in the Short-Spacing Separation Table.

Section 90.621(b)(5) permits stations to be located closer than the required separation, so long as the applicant provides letters of concurrence indicating that the applicant and each co-channel licensee within the specified separation agree to accept any interference resulting from the reduced separation between systems. Applicants are still required to file such concurrence letters with the Commission. Additionally, the Commission did not eliminate filings required by provisions such as international agreements, its environmental (National Environmental Protection Act (NEPA)) rules, its antenna structure registration rules, or quiet zone notification/filing procedures.

Section 90.693 requires that 800 MHz incumbent Specialized Mobile Radio (SMR) service licensees ''notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria.'' It has been standard practice for incumbents to notify the Commission of all changes and additional stations constructed in cases where such stations are in fact located less than the required 70 mile distance separation, and are therefore technically ''short-spaced,'' but are in fact fully compliant with the parameters of the Commission's Short-Spacing Separation Table.

The Commission uses this information to determine whether to grant licenses to applicants making ''minor modifications'' to their systems which do not satisfy mileage separation requirements pursuant to the Short-Spacing Separation Table.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–13731 Filed 6–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, June 12, 2012, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, and reports of actions Taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Notice of Proposed Rulemaking to Amend Proposed Section 380.8, Definition of ''Predominantly Engaged in Financial Activities'' for Purposes of Title II.

Memorandum and resolution re: Delegation of Authority to Act on Requests for Review of Notifications of Disapproval Under Section 32 of the FDI Act.

Discussion Agenda

Memorandum and resolution re: Final Rule Regarding Market Risk Amendment.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding Basel III General Approaches Rule.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding Basel III Advanced Approaches Rule.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding Standardized Approaches Rule.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: June 5, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–13929 Filed 6–5–12; 4:15 pm]

BILLING CODE 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 July 2, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Adams Bancshares, Inc.,* Adams, Minnesota, to merge with Elkton Bancshares, Inc., Elkton, Minnesota, and thereby indirectly acquire Farmers State Bank of Elkton, Elkton, Minnesota.

Board of Governors of the Federal Reserve System, June 4, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–13814 Filed 6–6–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct; Correction

AGENCY: Office of the Secretary, HHS.

ACTION: Correction of notice.

SUMMARY: This document corrects errors that appeared in the notice published in the May 31, **Federal Register** entitled ''Findings of Research Misconduct.''

DATES: *Effective Date:* June 7, 2012.

Applicability Date: The correction notice is applicable for the Findings of Research Misconduct notice published on May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Gorirossi or Sheila Fleming at 240–453–8800.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012–13126 of May 31, 2012 (77 FR 32116–32117), there is a typographical error in the first name of the Respondent. The error is identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. 2012–13126 of May 31, 2012 (77 FR 32116–32117), make the following corrections:

1. On page 32116, third column, last paragraph, change the name ''*Juan Ma, Ph.D.''* in the first line to read ''*Jian Ma, Ph.D.''*

2. On page 32117, first column, first paragraph, change the name ''Dr. Juan Ma'' to read ''Dr. Jian Ma.''

Dated: May 31, 2012.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2012–13829 Filed 6–6–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Blue Button Mash Up Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: The Office of the National Coordinator for Health Information Technology (ONC) and the Department of Veterans Affairs are working to empower individuals to be partners in their health through health information technology (health IT). Giving patients access to information about them related to the care they receive from doctors and other healthcare providers is in itself valuable, but it is also important to enable patients to use that information to make informed decisions.

Individuals should be able to access and use their basic health information together with other information to take action: To better understand their current health status, use decision support software to choose treatments, anticipate and consider the costs of different options, and target and modify the everyday behaviors that have the greatest impact on their health. Inspired by the well-known ''three-part aim'' for improvement of the health care system, this challenge requires participants to help individuals to take action based on combining their health information with additional information that puts it into a more meaningful context.

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 June 5, 2012. Challenge submission period ends September 5, 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

This challenge builds on a prior Blue Button challenge to make personal health information more usable and meaningful for the individual consumer or patient. Apps must be platform neutral. The challenge is broken into two parts:

1. *App Development:* Entrants must submit an app that makes the best use of Blue Button downloaded personal health data and combines it with other types of data. Apps must include data from at least two of the three part aim categories below.

2. *Reach:* The app must be able to garner high patient engagement rates. Entrants will therefore have to demonstrate a partnership with a personal health information data holding organization (such as a provider, payor, or Personal Health Record vendor—see healthit.gov/pledge for a definition of a data holding organization) to achieve wide distribution among patients.

Applying the Three Part Aim: To participate in the challenge, entrants must mash up Blue Button data—data about a patient which the patient can download directly using a health plan's, doctor's or hospital's Blue Button function—with information from two or more of the three part aim categories. Below are examples of types of contextual data that would qualify for purposes of this contest. Entrants can use data sets from the categories below or similar data sets.

Components of the Three Part Aim

Part 1: Better Care Interactions With the Healthcare System

- Assist individuals in choosing high quality care that is relevant to their individual needs by including ratings for physician comparisons, hospital comparisons, or other care quality data.
- Assist individuals in identifying providers, practices, and hospitals that are health information technology enabled by using information from CMS related to Meaningful Use or other sources.
- Support individuals in understanding their current state of health by combining clinical data and medical claims data to create a comprehensive list of the individual's medical conditions.
- Support individuals in understanding their current medication regimen by aggregating clinical data from doctors/hospitals, prescription claims data, and downloaded clinical data to create a single comprehensive list of medications.

Part 2: Better Care for Oneself Outside of the Healthcare System

- Provide support to help an individual meet some of their personally stated health goals, (for example related to healthy eating, exercise, social support, or other virtual or geographically based resources).
- Provide an easily understood representation of an individual's health status in comparisons to others of a similar demographic (age, gender, ethnicity, or otherwise), and make recommendations for actionable things an individual could do toward better health outcomes based on their comparative health data.
- Extrapolate how healthy behavior change can lead to positive health outcomes over time (for example show potential weight loss and reduced risk of cardiac illness from adding two 30 minute walks per week)

Part 3: Reduced Costs

- Provide information related to costs of relevant health care services (treatments, procedures, medication formularies, etc.) and/or financial savings likely to accrue from behavior changes.
- Create algorithms that exhibit cost savings to the individual and/or the health care system if the individual makes healthy living interventions, or different cost related choices in their health care.

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 either:

- Access the *www.challenge.gov* Web site and search for the ''Blue Button Mash Up 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: $45,000.
- Second Prize: $20,000.
- Third Prize: $10,000.

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:

- Effectively integrate Blue Button data that incorporates elements from two or more of the sections described

above (special consideration will be given to apps and tools that incorporate data from all three components of the three-part aim).

• Integrate patient-centered design and usability concepts to drive high patient adoption and engagement rates.

• Innovation—how is the data mashed up in innovative ways to contextualize the individual's Blue Button downloaded data.

• Provide a one page implementation plan for how this app solution will be implemented for scalability, including details for marketing and promotion.

• Existing or modified apps should show an uptake in their initial user base demonstrating the potential for market penetration based on Blue Button data contextualization capabilities.

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.

Authority: 15 U.S.C. 3719.

Dated: May 31, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–13819 Filed 6–6–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Health Data Platform Metadata 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.

SUMMARY: As part of the HHS Open Government Plan, the HealthData.gov Platform (HDP) is a flagship initiative and focal point helping to establish learning communities that collaboratively evolve and mature the utility and usability of a broad range of health and human service data. HDP will deliver greater potential for new data driven insights into complex interactions of health and health care services. To augment the HDP effort, seven complementary challenges will encourage innovation around initial platform- and domain-specific priority areas, fostering opportunities to tap the creativity of entrepreneurs and productivity of developers.

The ''Health Data Platform Metadata Challenge'' requests the application of existing voluntary consensus standards for metadata common to all open government data, and invites new designs for health domain specific metadata to classify datasets in our growing catalog, creating entities, attributes and relations that form the foundations for better discovery, integration and liquidity.

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 June 5, 2012. Challenge submission period ends October 2, 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 W3C has a number of standard vocabulary recommendations for Linked Data publishers, defining cross domain semantic metadata of open government data, including concept schemes, provenance, statistics, organizations, people, data catalogs and their holdings, linked data assets, and geospatial data, in addition to the foundational standards of the Web of Data (such as HTTP, XML, RDF and various serializations, SPARQL, OWL, etc). Other voluntary consensus standards development organizations are also making valuable contributions to open standards for Linked Data publishers, such as the emerging GeoSPARQL standard from the Open Geospatial Consortium.

In some cases, the entities and relations in these vocabulary standards are expressed using UML class diagrams as an abstract syntax, then automatically translated into various concrete syntaxes like XML Schemas and RDF Schemas, which also makes many of the standards from the Object Management Group easy to express as RDF Schemas, such as those that describe business motivation (including but not limited to vision, mission, strategies, tactics, goals, objectives), service orientation, process automation, systems integration, and other government specific standards. Oftentimes there exist domain specific standards organizations, with standards products that express domain specific entities and relations, such as those for the health or environmental sectors. The Data.gov PMO has recently stood up a site to collect these standards when expressed as RDF Schemas for use by the growing community of Government Linked Data publishers, which includes HHS/CMS, EPA, DOE/NREL, USDA, and the Library of Congress.

The challenge winner will demonstrate the application of voluntary consensus and de facto cross domain and domain specific standards, using as many of the HHS datasets available on healthdata.gov as possible. There are two objectives:

1. Apply existing standards as RDF Schemas from voluntary consensus standards organizations (W3C, OMG, OGC, etc.) for expressing cross domain metadata that is common to all open government data.

2. Design new HHS domain specific metadata based on the data made available on healthdata.gov where no RDF Schema is otherwise given or available.

When designing new metadata expressed as RDF Schemas, designers should:

• Leverage existing data dictionaries expressed as natural language in the creation of new conceptual schemas, as provided by domain authorities;

• Observe best practices for URI's schemes that is consistent with existing healthdata.gov work (such as the Clinical Quality Linked Data release from HDI 2011); and

• Organize related concepts into small, compose-able component vocabularies.

Turtle syntax for RDFS and RDF is preferred. The contributed code will be given an open source license and managed by HHS on github.com, with copyright and attribution to the developer(s) as appropriate, and will ideally be used to populate vocab.data.gov.

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 either:

- Access the *www.challenge.gov* Web site and search for the ''Health Data Platform Metadata 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:* $20,000.
- *Second Prize:* $10,000.
- *Third Prize:* $5,000.

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:

- *Metadata:* The number of cross domain and domain specific voluntary consensus and defacto standard schemas, vocabularies or ontologies that are (re)used or designed and applied to HHS data on healthdata.gov.
- *Data:* The number of datasets that the standards based cross domain metadata and schema designed domain specific data is applied to.
- *Linked Data:* The solution should use best practices for the expression of metadata definitions and instance data identification, leveraging the relevant open standards, including but not limited to foundational standards (RDF, RDFS, SPARQL, OWL), and other defacto vocabularies and ontologies such as those listed here as required, with the expectation that existing standards will be reused to the fullest extent possible.
- *Components:* Leveraging software components that are already a part of the HDP is preferable, but other open source solutions may be used.
- *Tools:* Use of automation and round trip engineering that enable multiple concrete syntax realization from abstract syntax of cross domain and/or domain specific metadata is desirable, with no expectation that the tools must be open source or otherwise contributed to HDP as part of this challenge submission. Only newly designed domain specific RDF Schemas, their composition cross domain standards based RDF Schemas, and their application to various datasets are expected to be submitted for this challenge. Tool functionality may be highlighted to explain implementations as desired.
- *Best practices:* Where any new schemas and software code is created, they should exemplify design best practices and known software patterns, or otherwise establish them.
- *Documentation:* Articulation of design using well known architecture artifacts.
- *Engagement:* Willingness to participate in the community as a maintainer/committer after award.

Additional Information

The virtual machines and codebase outputs from innovations demonstrated by challenge participants will be made publically available through HHS Github repositories (see *https://github.com/hhs/*) as release candidates for further community refinement as necessary, including open source licensing and contributor attribution as appropriate.

Authority: 15 U.S.C. 3719.

Dated: May 31, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–13826 Filed 6–6–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Health Data Platform Simple Sign-On 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.

SUMMARY: As part of the HHS Open Government Plan, the HealthData.gov Platform (HDP) is a flagship initiative and focal point helping to establish learning communities that collaboratively evolve and mature the utility and usability of a broad range of health and human service data. HDP will deliver greater potential for new data driven insights into complex interactions of health and health care services. To augment the HDP effort, seven complementary challenges will encourage innovation around initial platform- and domain-specific priority areas, fostering opportunities to tap the creativity of entrepreneurs and productivity of developers.

The ''Health Data Platform Simple Sign-On Challenge'' will improve community engagement by providing simplified sign on (SSO) for external users interacting across multiple HDP technology components, making it easier for community collaborators to contribute, leveraging new approaches to decentralized authentication.

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 June 5, 2012. Challenge submission period ends October 2, 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

Healthdata.gov is leveraging a variety of open source infrastructure components including the Drupal 7 content management system, the CKAN data portal, the Solr search engine, and the community edition of the Virtuoso (as a RDF database and SPARQL endpoint query service). Going forward, the HDP team intends to realize an architecture similar to the Linked Data Integration Framework (LDIF) and leverage tools in the LOD2 stack where possible, beginning with Ontowiki to be used as Virtuoso editor, most likely followed by SILK for cross domain correlation. HDP would like to enable service requestors to be authenticated using WebID from the W3C. Some of the current and upcoming HDP infrastructure components support aspects of WebID functionality already while others do not. A number of WebID libraries are available, written in various languages.

This challenge winner will present a replicable open source virtual machine environment demonstrating how HDP components (with an initial emphasis on Virtuoso,[1] Drupal 7,[2] CKAN,[3] OntoWiki,[4] and Solr,[5]) can provide and/or consume WebID's, contributing to simplified sign-on for humans and machines. The developer designs how their code might utilize each component as a WebID identity provider or relying party, presumably leveraging existing capabilities to the fullest extent possible. The end result will demonstrate seamless integration across a number of HDP components, without introducing any external service dependencies that couldn't be operated by HHS. The contributed code will be given an open source license and managed by HHS on github.com, with copyright and attribution to the developer(s) as appropriate.

[1] *http://virtuoso.openlinksw.com/dataspace/dav/wiki/Main/.*

[2] *http://www.acquia.com/Drupal-7.*

[3] *http://ckan.org/.*

[4] *http://lod2.eu/Project/OntoWiki.html.*

[5] *http://lucene.apache.org/solr/.*

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 either:

- Access the *www.challenge.gov* Web site and search for the ''Health Data Platform Simple Sign-On 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:* $20,000.
- *Second Prize:* $10,000.
- *Third Prize:* $5,000.

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:

- *Coverage:* The more integrated components the better, with an emphasis on leverage existing work and capabilities of each component.
- *Coupling:* The level with which any integrated components can be removed without affecting the remaining component functionality.
- *Performance:* The lowest latency and best responsiveness of the component interactions as demonstrated by test cases.
- *Elegance:* How the design deals with both human and application agents that interact with different interfaces, and how each is managed across infrastructure components.
- *Documentation:* Articulation of design using well known architecture artifacts and executable test cases.
- *Engagement:* Willingness to participate in the community as a maintainer/committer after award.

Additional Information

The virtual machines and codebase outputs from innovations demonstrated by challenge participants will be made publically available through HHS Github repositories (see *https://github.com/hhs/*) as release candidates for further community refinement as necessary, including open source licensing and contributor attribution as appropriate.

Authority: 15 U.S.C. 3719.

Dated: May 31, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–13830 Filed 6–6–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''My Air, My Health Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS. National Institute of Environmental Health Sciences, National Institutes of Health, HHS. *Award Approving Official:* Farzad Mostashari, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: Environmental and public health are closely related and complementary fields—and their future depends on a closer understanding of those connections. New portable sensors have the potential to transform the way we measure and interpret the influence of pollution on health. These technologies can provide a picture that is more detailed and more personal, with dramatic implications for health care, air quality oversight, and individuals' control over their own environments and health.

The U.S. Environmental Protection Agency (EPA) and U.S. Department of Health and Human Service (HHS) [National Institute of Environmental Health Sciences (NIEHS) and Office of the National Coordinator for Health Information Technology (ONC)] envision a future in which powerful, affordable, and portable sensors provide a rich awareness of environmental quality, moment-to-moment physiological changes, and long-term health outcomes. Health care will be connected to the whole environment, improving diagnosis, treatment, and prevention at all levels.

Many of the first steps toward this future have already been taken. Prototype projects have developed portable air quality and physiologic sensors, and experimental analysis tools for handling data that is higher quantity, but often lower quality, than more traditional monitoring techniques. The ''My Air, My Health Challenge'' aims to build on this foundation. We are seeking solutions that integrate data from portable physiological and air quality monitors, producing a combined picture that is meaningful and usable. The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358) and section 103 of the Clean Air Act, 42 U.S.C. 7403. This challenge addresses the mission of the NIEHS to conduct and support programs with respect to factors in the environment that affect human health, directly or indirectly. 42 U.S.C. 285.

DATES: *Phase 1:* Effective on June 6, 2012. Submission period ends October 5, 2012, 11:59 p.m. et. *Phase 2:* Effective on November 19, 2012. Submission period ends May 19, 2013, 11:59 p.m. et.

FOR FURTHER INFORMATION CONTACT: Denice Shaw, EPA, 202–564–1108; Adam Wong, ONC, 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The ''My Air, My Health Challenge'' is a multidisciplinary call to innovators and software developers (''Solvers'') to enable near-real-time, location-specific monitoring and reporting of air pollutants and potentially related physiological parameters, using a personal/portable integrated system to assess connections between the two (''sensor systems''). The system must link air-pollutant concentrations with physiological data, provide geocoded and time-stamped files in an easy-to-use format, and transmit this data via existing networks to a central data repository provided by EPA and HHS.

The challenge is structured in 2 phases:

Phase 1—Project Plan (no more than 15 pages, not including appendices that may consist of diagrams/schematics, bibliography, and other supplementary materials).

1. Propose a plausible link between health outcomes and airborne pollutants (chemical species and/or particulates), and provide evidence to support a plausible and physiologically meaningful relationship between airborne pollutants and physiological metrics in a defined population.

2. Propose a prototype design and development plan for an integrated multi-sensor and data management system that may be easily worn or carried by individuals within the defined target community/population.

3. Conceptualize data generation, management (may include processing & on-board storage), and transmission functionality of the device.

4. Propose a small-scale proof-of-concept study to validate the proposed prototype.

5. Study design process must include input from the target community/population.

Phase 2—Proof-of-Concept Pilot Project.

6. Finalists attend an event for feedback, questions, and business/entrepreneurial resources prepared by Challenge sponsors (EPA, HHS ONC, NIEHS).

7. Solvers develop the proposed prototype and execute experimental validation of the system to bring together data from personal air quality and physiological monitors, showing how these types of data and sensors can be integrated for practical use by health and environmental agencies, and by individual citizens. Proof-of-concept data must illustrate the accuracy and precision of the raw data and of any processed data produced by the system.

Level of Focus for Health/Pollution connections: Systems must track airborne pollutants and physiological parameters for a known or plausible health-pollution link. Solvers must be able to justify their chosen combination with research citations and to optimize the air sampling parameters (volume, frequency, etc.) and physiological measurement parameters to provide resolution appropriate to the specific pollutant, or combination of pollutants, and related health implications. Challenge Sponsors will provide examples of such links for illustrative purposes (appended to the challenge announcement), but will not limit Solvers to these particular cases.

Sensor development: Solvers are not expected to develop novel sensors for this challenge, but are not restricted to commercially available sensors. They may use sensors that are currently in the development or piloting stage, but must show that the sensor will be ready to use in functional tests—at least at a small scale—in time for the Phase 2 proof-of-concept demonstration. Instruments must be well characterized in terms of precision, accuracy and sensitivity. Integrated sensor systems must be able to transmit data to the central repository (in real time, or store and forward) using existing data networks (e.g. 3G, LTE, or WiFi), or able to connect with personal devices (e.g., smart phones) that have such capability. Solvers must enable appropriate calibration and error checking capabilities, although these need not be onboard the portable monitoring components.

Data Requirements and Constraints: Data transmitted by the integrated devices to a centralized data repository must enable the following to be understood from transmitted data:

1. Indicators of device functionality, including any results of automated

system diagnostics, calibrations, or error logs

2. The device unique identifier, including any paired communication device identifier (particularly important if bidirectional communication functionality is proposed)

3. Date and time the data were collected/measurements made (start and end timestamp)

4. The location of the device during data collection (geocode)—if sampling occurs over several minutes or longer Solvers should consider that users may be using transportation and that analysis should ideally show locations between sample start and end

5. Raw measurement data (quantitative or semi-quantitative) as well as any processed data or combined

6. Quality control metrics indicating, for instance, whether the device is being worn/carried or functioning correctly. Error checking can occur either prior to or after data transmission, but is an essential component.

The preferred data transmission file format is comma separated value (.csv) or variants thereof. Alternatively, encrypted binary files are also acceptable. Encryption keys/codes should be provided to the Challenge Sponsors so that data can be accessed at the central data repository.

Pollutant Focus: Solvers will be required to include at least one air pollution metric—although at their discretion they may include multiple air pollution metrics and/or other environmental metrics such as noise level and UV exposure. The focus, however, will be on chemical and/or particulate air pollutants.

Physiological Parameter Focus: Solvers will be required to include at least one physiological metric—although at their discretion they may include multiple physiological metrics and/or other person-oriented metrics such as behaviors and social interactions. The focus, however, will be on physical parameters (e.g., heart rate, breathing, pulse oxygenation), and their connection to pollutants.

Physical Guidelines for Sensors: At least one component of the sensor system must be wearable or carryable, and all components should have a minimal burden and be minimally obtrusive. The overall sensor system must focus on personal and local metrics (i.e., measuring air quality in the immediate vicinity of the wearer). Wearable components must be the right size and weight for their target audience (e.g., no more than 300 g for a child). Sampling frequency and area must be appropriate to the pollutants and physiological metrics of interest, as well as to the context of data collection (e.g., by walkers, cyclists or passengers on public transportation). The sensor system must include an on-board data buffer for when network access is unavailable, and may also at the Solver's discretion include personal media to which data may be downloaded for permanent or temporary storage. Open source hardware and software are desired but not required.

Measurement Guidelines for Sensors: Accuracy, detection limit, measurement range, and sensitivity of all sensors must be at sufficient resolution to record health-relevant changes in air pollutant(s) and physiological marker(s). If processing of the data is required in order to achieve this (e.g., normalization, increasing signal-to-noise ratios), the Solver must include the algorithm and its scientific basis (i.e., previously collected data and/or appropriate citations) in their report. Alternatively, centralized processing that enables parsing of local data, in order to increase data robustness and reduce false positive signals, may be used. If such an approach is determined to be useful, Solvers must outline suitable strategies and/or boundary criteria. In either case, solvers must communicate the overall uncertainty level of the final system output

Community Involvement: The sensor system must address a need in a specific community or population. In addition to scientific evidence supporting that need, Solvers must also seek and document community input. Representatives of the affected community should provide feedback on the pilot project both during conceptualization (Phase 1), and throughout the pilot study (Phase 2). This is not intended to override the Solvers' scientific judgment on technical issues, but to ensure that the project is respectful of local knowledge, community identity, and needs. Projects must include feedback to the community regarding both technical success (e.g., whether sensors performed as planned) and results (e.g., any correlations found in the data).

Scaling and Future Plans: While Phase 2 requires only a small-scale proof-of-concept project, final submissions for this phase must include a description of how the project could or will be extended and expanded. In general, Solvers are asked to propose concrete next steps that might be carried out with more time or resources available.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity shall have complied with all the requirements under this section and **Federal Register** Notice.

This challenge is open to any Solver who is (1) an individual or team of U.S. citizens or permanent residents of the United States who are 18 years of age and over, or (2) an entity incorporated in and maintaining a primary place of business in the United States. Foreign citizens can participate as employees of an entity that is properly incorporated in the U.S. and maintains a primary place of business in the U.S. Solvers may submit more than one entry.

Eligibility for Phase 2 is conditional upon being selected as a Phase 1 Finalist. Eligibility for a prize award is contingent upon fulfilling all requirements set forth herein. An individual, team, or entity that is currently on the Excluded Parties List (*https://www.epls.gov/*) will not be selected as a Finalist or Winner.

Employees of EPA, HHS, and the reviewers or any other company or individual involved with the design, production, execution, or distribution of the challenge and their immediate family (spouse, parents and step-parents, siblings and step-siblings, and children and step-children) and household members (people who share the same residence at least three (3) months out of the year) are not eligible to participate.

An individual or entity may not be a Federal entity or Federal employee acting within the scope of their employment. Federal employees seeking to participate in this challenge outside the scope of their employment should consult their ethics official prior to developing a 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.

Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award. (Grantees should consult with their cognizant Grants Management Official to make this determination.) 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.

Liability and Indemnification: By participating in this competition, Solvers 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 participation in this competition, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this competition, Solvers agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Insurance: Based on the subject matter of the competition, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from competition participation, Solvers are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this competition.

Registration Process for Participants

To register for this challenge participants may do any of the following:

- Access the *www.challenge.gov* Web site and search for the ''My Air, My Health 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.
- Access the Innocentive challenge Web site at *www.innocentive.com/myairmyhealth.*

Amount of the Prize

- Phase 1: $15,000 each for up to four Finalists who are selected to move on to Phase 2.
- Phase 2: $100,000 to the Winner.

Awards may be subject to Federal income taxes.

Payment of the Prize

HHS and EPA prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. HHS and EPA will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

The review panel will make selections based upon the following criteria in Phase 1:

- Strength of evidence and/or argumentation regarding the linkage between air pollutant and physiological effect.
- Potential significance of technology and eventual benefit to target population(s).
- Viability of proposed sensor technologies to detect and quantify pollutants and their effects, and provide physiologically relevant health and air quality data.
- Viability of the proposed data reporting technology (communication to a centralized data repository provided by EPA and HHS)
- Viability of the proposed project plan.
- Viability of the proposed instrument design as a wearable/portable device.
- Viability of the proposed proof-of-concept study (low complexity is preferred).
- Appropriate use of community input in designing proof-of-concept study.

The review panel will make selections based upon the following criteria in Phase 2:

- Sensors: Successful technical collection of both health and environmental data
- Data Reporting: Successful formatting and transmission of data
- Data processing and evaluation
- Community Involvement and Interaction

Additional Information

Intellectual Property Rights: Upon submission, each Solver warrants that he or she is the sole author and owner of the work, that the work is wholly original with the Solver (or is an improved version of an existing work that the Solver has sufficient rights to use—including the substantial improvement of existing open-source work) and that it does not infringe any copyright or any other rights of any third party of which Solver is aware. Each Solver also warrants that the work is free of malware.

(a) Copyright. By participating in this competition, each Solver hereby grants to the Federal government an irrevocable, paid-up, royalty-free, nonexclusive worldwide license to reproduce, distribute copies, display, create derivative works, and publicly post, link to, and share, the work or parts thereof, including any parts for which it has obtained rights from a third party, in any medium, for Federal purposes. User warrants that it has obtained rights to any parts of the work not authored by Solver adequate to convey the aforementioned license. (b) Inventions. Finalists hereby grant to the Federal government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any invention throughout the world made by Finalists that, if patented, would cover the submission or its use.

Privacy, Data Security, Ethics, and Compliance

Solvers are required to identify and address privacy and security issues in their proposed projects, and describe specific solutions for meeting them.

In addition to complying with appropriate policies, procedures, and protections for data that ensures all privacy requirements and institutional policies are met, use of data should not allow the identification of the individual from whom the data was collected. Solvers are responsible for compliance with all applicable federal, state, local, and institutional laws, regulations, and policy. These may include, but are not limited to, HIPAA, HHS Protection of Human Subjects regulations, and FDA regulations. If approvals (e.g., from Institutional Review Boards) will be required to initiate project activities in Phase 2, it is recommended that solvers apply for approval at or before the Phase 1 submission deadline.

The following links are intended as a starting point for addressing regulatory requirements, but should not be interpreted as a complete list of resources on these issues:

HIPAA

Main link: *http://www.hhs.gov/ocr/privacy/index.html.*

Summary of the HIPAA Privacy Rule: *http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html.*

Summary of the HIPAA Privacy Rule: *http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html.*

Summary of the HIPAA Security Rule: *http://www.hhs.gov/ocr/privacy/hipaa/understanding/srsummary.html.*

Human Subjects—HHS

Office for Human Research Protections: *http://www.hhs.gov/ohrp/index.html.*

Protection of Human Subjects Regulations: *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html.*

Policy & Guidance: *http://www.hhs.gov/ohrp/policy/index.html.*

Institutional Review Boards & Assurances: *http://www.hhs.gov/ohrp/assurances/index.html.*

Human Subjects—FDA

Clinical Trials: *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/default.htm.*

Office of Good Clinical Practice: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/OfficeofScienceandHealthCoordination/ucm2018191.*

Consumer Protection—FTC

Bureau of Consumer Protection: *http://business.ftc.gov/privacy-and-security.*

Authority: 15 U.S.C. 3719.

Dated: May 31, 2012.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2012–13834 Filed 6–6–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day 12–12BZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Data collection for the residential care facility and adult day service center components of the National Study of Long-Term Care Providers—NEW—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, ''shall collect statistics on health resources * * * [and] utilization of health care, including extended care facilities, and other institutions.''

NCHS seeks approval to collect data for the residential care facility (RCF) and adult day services center (ADSC) components of a planned new survey, the National Study of Long-Term Care Providers (NSLTCP). A one year clearance is requested.

As background here are some details on the plans for the whole study, of which this data collection is two components. The entire NSLTCP is being designed to (1) Broaden NCHS' ongoing coverage of paid, regulated long-term care (LTC) providers; (2) merge with existing administrative data on LTC providers (i.e. Centers for Medicare and Medicaid Services (CMS) data on nursing home, home health, and hospice care); (3) update data more frequently on LTC providers for which nationally representative administrative data do not exist; and (4) enable comparisons across LTC provider types and monitor the supply and use of these providers.

The data will be collected in the 50 states and the District of Columbia from two types of LTC facilities: 11,701 RCFs and 5,000 ADSCs. The data to be collected from RCCs and ADSCs include basic characteristics, services offered, staffing, and practices of providers, as well as distributions of the demographics, physical functioning, and cognitive functioning of users (RCC residents and ADSC participants) aggregated to the RCC/ADSC level.

Expected users of data from this collection effort include, but are not limited to CDC; other Department of Health and Human Services (DHHS) agencies, such as the Office of the Assistant Secretary for Planning and Evaluation and the Agency for Healthcare Research and Quality; provider associations, such as LeadingAge (formerly the American Association of Homes and Services for the Aging), National Center for Assisted Living, American Seniors Housing Association, Assisted Living Federation of America, and National Adult Day Services Association; universities; foundations; and other private sector organizations, such as AARP.

Expected burden from data collection is 30 minutes for respondents. We estimate that 10% of RCC and ADSC directors will be called for 15 minutes of data retrieval when there are errors or omissions in their returned surveys. There is no cost to respondents other than their time to participate. The total estimate of annualized burden is 8,769 hours.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)
RCC Director	RCC Questionnaire	11,701	1	30/60
ADSC Director	ADSC Questionnaire	5,000	1	30/60
RCC and ADSC Directors	Data Retrieval	1,670	1	15/60

Kimberly S. Lane,

Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–13795 Filed 6–6–12; 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: Native Employment Works (NEW) Program Plan Guidance and Report Requirements.

OMB No.: 0970–0174.

Description

The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance provides instructions for preparing a NEW program plan and explains the process for plan submission every third

year. The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

Respondents

Federally recognized Indian Tribes and Tribal organizations that are NEW program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NEW program plan guidance	26	1	29	754
NEW program report	48	1	15	720

Estimated Total Annual Burden Hours: 1,474.

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. 2012–13812 Filed 6–6–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0110]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 9, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0437. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting—21 CFR Part 803 (OMB Control Number 0910–0437)—Extension

Section 519(a)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360i(a)(1)) requires every manufacturer or importer to report ''whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices: (A) May have caused or contributed to a death or serious injury, or (B) has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.''

Section 519(b)(1)(A) of the FD&C Act requires ''whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that a device has or may have caused or contributed to the death or serious illness, of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the Secretary and, if the identity of the manufacturer is known, to the manufacturer of the device.''

Section 519(b)(1)(B) of the FD&C Act requires ''whenever a device user facility receives or otherwise becomes aware of: (i) Information that reasonably suggests that a device has or may have caused or contributed to the serious illness of, or serious injury to, a patient of the facility * * *, shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the manufacturer of the device or to the Secretary if the identity of the manufacturer is not known.''

Complete, accurate, and timely adverse event information is necessary for the identification of emerging device problems. Information from these

reports will be used to evaluate risks associated with medical devices which will enable FDA to take appropriate regulatory measures in protection of the public health under section 519 of the FD&C Act. Thus FDA is requesting approval for these information collection requirements which are being implemented under part 803 (21 CFR part 803).

Respondents to this collection of information are businesses or other for-profit and nonprofit organizations including user facilities, manufacturers, and importers of medical devices.

Part 803 requires user facilities to report to the device manufacturer and to FDA in case of a death, incidents where a medical device caused or contributed to a death or serious injury. Additionally, user facilities are required to annually submit the number and summary of advents reported during the calendar year, using Form FDA 3419. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA.

The number of respondents for each CFR section in table 1 of this document is based upon the number of respondents entered into FDA's internal databases. FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete, with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required for reporting the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

The Agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints, under § 803.18(d).

The Agency has estimated that on average 220 user facilities, importers, and manufacturers would annually be required to establish new procedures, or revise existing procedures, in order to comply with this provision.

Therefore, FDA estimates the one-time burden to respondents for establishing or revising procedures under § 803.17 to be 2,200 hours (220 respondents × 10 hours). For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers, not required to revise their written procedures to comply with this provision, are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Under § 803.18, 30,000 respondents represent distributors, importers, and other respondents to this information collection. FDA estimates that it should take them approximately 1.5 hours to complete the recordkeeping requirement for this section. Total hours for this section equal 45,000 hours.

In the **Federal Register** of February 14, 2012 (77 FR 8260), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Subsequent to publication of the 60-day notice, FDA performed an additional inspection of the data and consulted with the MDR program staff. Per this extra review, FDA has updated the estimated burden hours to more accurately reflect the burden.

Reporting Requirements

21 CFR part 803 requires user facilities to report incidents where a medical device caused or contributed a death or serious injury to the device manufacturer and to FDA in the case of a death. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that, should the malfunction recur, it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers (see third-party disclosure burden table), unless the manufacturers are unknown, then the reports are sent to FDA.

FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete with the exception of 21 CFR 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required to report the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

Recordkeeping Requirements

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the MDR requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints under 21 CFR 803.18(d). We estimate that it will take each respondent 1.5 hours annually to maintain the records.

The agency has estimated that on average, 220 user facilities, importers, and manufacturers would annually be required, under 21 CFR 803.17, to establish new procedures, or revise existing procedures, in order to comply with this provision. We estimate that it will take each respondent 10 hours annually to establish new procedures, or revise existing procedures.

Third-Party Disclosure Burden

Under 21 CFR 803.40 and 803.42, device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA. We estimate that it will take respondents 1 hour annually to report the information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

CFR Section	FDA Form No.	Number of respondents	Annual frequency of response	Total annual responses	Hours per response	Total hours
Exemptions—803.19		57	4	228	3	684
User Facility Reporting—803.30 and 803.32		544	9	4,896	1	4,896
User Facility Annual Reporting—803.33	FDA Form 3419	195	1	195	1	195
Importer Reporting, Death and Serious Injury—803.40 and 803.42		1	1	1	1	1
Manufacturer Reporting—803.50, through 803.53		1,239	243	301,077	1	301,077
Supplemental Reports—803.56		124	302	37,448	1	37,448
Total						344,301

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	Number of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeper	Total hours
MDR Procedures—803.17	220	1	220	10	2,200
MDR Files—803.18	30,000	1	30,000	1.5	45,000
Total					47,200

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Importer Reporting, Malfunctions—803.40 and 803.42	1	25	25	1	25

Dated: June 1, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–13832 Filed 6–6–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0178]

International Conference on Harmonisation; Guidance on S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use'' (ICH S2(R1)). This guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The ICH S2(R1) combines and replaces two ICH guidances, ''S2A Specific Aspects for Regulatory Genotoxicity Tests for Pharmaceuticals'' and ''S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals.'' ICH S2(R1) provides guidance to drug sponsors on which tests should be performed to assess potential genotoxicity of pharmaceuticals. It also provides guidance on testing conditions, data interpretation, and followup strategies if a positive response is seen in in vitro assays. This guidance is intended to provide drug sponsors with recommendations to ensure that drugs are appropriately tested for potential to cause genetic damage and to ensure efficient development of new drugs.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the Guidance

David Jacobson-Kram, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6488,

Silver Spring, MD 20993–0002, 301–796–0175.

Regarding the ICH

Michelle Limoli, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 3506, Silver Spring, MD 20993–0002, 301–796–4600.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of March 26, 2008 (73 FR 16024), FDA published a notice announcing the availability of a draft guidance entitled ''S2(R1) Genotoxicity Testing and Data Interpretation for Pharmaceuticals Intended for Human Use.'' The notice gave interested persons an opportunity to submit comments by May 12, 2008.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory Agencies in November 2011.

The purpose of the ICH S2(R1) revision is to provide guidance on optimizing the standard genetic toxicology battery for prediction of potential human risks, and on interpreting results, with the goal of improving risk characterization for carcinogenic effects that have their basis in changes in the genetic material. The revised guidance describes internationally agreed-upon standards for followup testing and interpretation of positive results in vitro and in vivo in the standard genetic toxicology battery, including assessment of nonrelevant findings.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: June 1, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–13774 Filed 6–6–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of a Noncompetitive Supplement and a 7-Month Extension of the Period of Support for the Frontier Extended Stay Clinic (FESC) Cooperative Agreement Recipient—SouthEast Alaska Regional Health Consortium

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of a Noncompetitive Supplement and a 7-Month Extension of the Period of Support for the Frontier Extended Stay Clinic (FESC) Cooperative Agreement Recipient—SouthEast Alaska Regional Health Consortium.

SUMMARY: The Health Resources and Services Administration (HRSA) will be issuing a non-competitive supplement and a 7-month extension of the period of support to the Frontier Extended Stay Clinic (FESC) Cooperative Agreement recipient of record, SouthEast Alaska Regional Health Consortium (Grant Number U17RH23237). The FESC Cooperative Agreement helps to examine the effectiveness and appropriateness of a new type of provider, FESC, in providing health care services in remote areas. The 7-month extension with funds will align with the related three-year Centers for Medicare and Medicaid Services (CMS) demonstration, which will run until March 2013.

SUPPLEMENTARY INFORMATION: The recipient of record and intended award amount is:

Grant No.	Grantee name	Grantee city	Grantee state	CFDA No.	Recommended supplemental award amount
U17RH23237	SouthEast Alaska Regional Health Consortium	Sitka	AK	93.912	$700,000.00

Intended Recipient of the Award: SouthEast Alaska Regional Health Consortium.

Amount of the Award: $700,000.00.

CFDA Number: 93.912.

Project Period: September 1, 2011 through March 31, 2013.

Authority: Section 330A of the Public Health Service Act, as amended, (42 U.S.C. 254c).

Justification

The Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) authorized CMS to conduct a demonstration program in which FESCs would be treated as Medicare providers. The CMS demonstration took several years to develop and officially began on April 1, 2010, when the first clinic site submitted the first claim to CMS. This 3-year demonstration will run until March 2013.

In 2004, Congress appropriated funds to HRSA to undertake a demonstration project that supports the development of a FESC CMS Medicare provider type. By supplementing the award to the current recipient, there will be continued support to keep the FESC sites participating through (or close to) the end of the CMS demonstration. The CMS demonstration provides payments only for FESC services provided to Medicare beneficiaries. On average, only 20 percent of FESC services are Medicare-eligible, meaning that the clinics do not receive payment for as much as 80 percent of their FESC services. HRSA funds provide support for those services that are not reimbursed by Medicare.

FOR FURTHER INFORMATION CONTACT: Aaron Fischbach, Health Resources and Services Administration, Office of Rural Health Policy, 5600 Fishers Lane, Room 5A–05, Rockville, Maryland 20852, or email *afischbach@hrsa.gov.*

Dated: May 30, 2012.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

[FR Doc. 2012–13831 Filed 6–6–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Review of a K22 Application.

Date: June 12, 2012.

Time: 5:30 p.m. to 6:30 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: Sergei Radaev, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892, 301–435–5655, *sradaev@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13837 Filed 6–6–12; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Interdisciplinary Training and Education for Type 1 Diabetes Research (T90/R90).

Date: June 26, 2012.

Time: 1:00 p.m. to 3:30 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: Lakshmanan Sankaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@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: June 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13845 Filed 6–6–12; 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 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 Diabetes and Digestive and Kidney Diseases Special; Emphasis Panel, Islet Transplant.

Date: July 24, 2012.

Time: 2:00 p.m. to 4:00 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: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.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: June 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13847 Filed 6–6–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposal and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Asthma Control During Pregnancy: Predictors of Variability in Maternal Impairment Due to Asthma and Associated Maternal and Pregnancy Outcomes.

Date: June 19, 2012.

Time: 1:45 p.m. to 3:00 p.m.

Agenda: To review and evaluate concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13850 Filed 6–6–12; 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 Special Topics: Topics in Bacterial Pathogenesis.

Date: June 28–29, 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: Rolf Menzel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Drug Discovery for the Nervous System.

Date: June 28, 2012.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA Panel: Molecular and Cellular Substrates of Complex Brain Disorders.

Date: June 29, 2012.

Time: 8:00 a.m. to 7:00 p.m.

*Agenda:*To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Smoking Applications Supplements.

Date: June 29, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@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 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13851 Filed 6–6–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed 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 Nursing Research Special Emphasis Panel Assessing and Managing Symptoms in Individuals with Alzheimer's Disease.

Date: June 26, 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: Mary A. Kelly, Program Specialist, DEA/OR, NINR/NIH, 6701 Democracy Blvd., Suite 700, Bethesda, MD 20892, 301–496–0235, *mary.kelly@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel Centers of Excellence in Symptom Science.

Date: June 28–29, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Inst. of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel Fellowship and Career Award Grant Review.

Date: June 28, 2012.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary A. Kelly, Program Specialist, DEA/OR, NINR/NIH, 6701 Democracy Blvd., Suite 700, Bethesda, MD 20892, 301–496–0235, *mary.kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13848 Filed 6–6–12; 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; Symptoms of Lower Urinary Tract Dysfunction Research Network.

Date: July 16, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special, Emphasis Panel; Planning Centers for Interdisciplinary Research in Benign Urology.

Date: July 20, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.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: June 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13846 Filed 6–6–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Advancing Translational Sciences Special Emphasis Panel, Conference Grants.

Date: June 26, 2012.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Grants Management & Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Room 1080, 1 Dem. Plaza, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov.*

Dated: June 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13844 Filed 6–6–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0113]

Privacy Act of 1974; Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records titled, ''Department of Homeland Security, U.S. Customs and Border Protection, DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records.'' This system of records will allow the Department of Homeland Security/U.S. Customs and Border Protection to improve border and national security by providing AFI users with a single platform for research, analysis, and visualization of large amounts of data from disparate sources and maintaining the final analysis or products in a single, searchable location for later use as well as appropriate dissemination. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking concurrent with this system of records elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before July 9, 2012. This new system will be effective July 9, 2012.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0113 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

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

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence E. Castelli (202–325–0280), CBP Privacy Officer, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 Ninth Street NW., Washington, DC 20229. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) proposes to establish a new DHS system of records titled, ''DHS/U.S. Customs and Border Protection, DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records.'' CBP is publishing this SORN because AFI is a group of records under the control of CBP that contains personally identifiable information which is retrieved by a unique identifier.

AFI enhances DHS's ability to identify, apprehend, and prosecute individuals who pose a potential law enforcement or security risk; and it aids in the enforcement of customs and immigration laws, and other laws enforced by DHS at the border. AFI is used for the purposes of: (1) Identifying individuals, associations, or relationships that may pose a potential law enforcement or security risk, targeting cargo that may present a threat, and assisting intelligence product users in the field in preventing the illegal entry of people and goods, or identifying other violations of law; (2) conducting additional research on persons and/or cargo to understand whether there are patterns or trends that could assist in the identification of potential law enforcement or security risks; and (3) sharing finished intelligence products developed in connection with the above purposes with DHS employees who have a need to know the analysis in the intelligence products in the performance of their official duties and who have appropriate clearances or permissions. Finished intelligence products are tactical, operational, and strategic law enforcement intelligence products that have been reviewed and approved for sharing with finished intelligence product users and authorities outside of DHS, pursuant to routine uses.

To support its capability to efficiently query multiple data sources, AFI creates and maintains an index, which is a portion of the necessary and relevant data in existing operational DHS source systems, by ingesting this data through and from the Automated Targeting System (ATS) and other source systems. In addition to the index, AFI provides AFI analysts with different tools that assist in detecting trends, patterns, and emerging threats, and in identifying non-obvious relationships.

AFI improves the efficiency and effectiveness of CBP's research and analysis process by providing a platform for the research, collaboration, approval, and publication of finished intelligence products.

AFI provides a platform for preparing responses to requests for information (RFIs). AFI will centrally maintain the requests, the research based on those requests, and the response to those requests. AFI allows analysts to perform federated queries against external systems of record, including those of Department of State, the Department of Justice/FBI, as well as publicly and commercially available data sources, and eventually, classified data. AFI also enables an authorized user to search the Internet for additional information that may contribute to an intelligence gathering and analysis effort. AFI facilitates the sharing of finished intelligence products within DHS and tracks sharing outside of DHS.

Two principal types of users will access AFI: DHS analysts and DHS finished intelligence product users. Analysts will use the system to obtain a more comprehensive view of data available to CBP, and then analyze and interpret that data using the visualization and collaboration tools

accessible in AFI. If an analyst finds actionable terrorist, law enforcement, or intelligence information, he may use relevant information to produce a report, create an alert, or take some other appropriate action within DHS's mission and authorities. In addition to using AFI as a workspace to analyze and interpret data, analysts may submit or respond to RFIs, assign tasks, or create finished intelligence products based on their research or in response to an RFI. Finished intelligence product users are officers, agents, and employees of DHS who have been determined to have a need to know the analysis in the intelligence products in the performance of their official duties and who have appropriate clearances or permissions. Finished intelligence product users will have more limited access to AFI, will not have access to the research space or tools, and will only view finished intelligence products that analysts published in AFI. Finished intelligence product users are not able to query the data from the source systems through AFI.

AFI performs extensive auditing that records the search activities of all users to mitigate any risk of authorized users conducting searches for inappropriate purposes. AFI also requires that analysts re-certify annually any user-provided information marked as containing PII to ensure its continued relevance and accuracy. Analysts will be prompted to re-certify any documents that contain PII which are not related to a finished intelligence product. Information that is not re-certified is automatically purged from AFI. Account access is controlled by AFI passing individual user credentials to the originating system or through a previously approved certification process in another system in order to minimize the risk of unauthorized access. When an analyst conducts a search for products, AFI will only display those results that an individual user has permission to view.

Consistent with DHS's information sharing mission, information stored in AFI may be shared consistent with the Privacy Act, including in accordance with the routine uses, and applicable laws as described below including sharing with other DHS components and appropriate federal, state, local, tribal, territorial, foreign, multilateral, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information and the information will be used consistent with the Privacy Act, including the routine uses set forth in this SORN, in order to carry out national security, law enforcement, customs, immigration, intelligence, or other authorized functions.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**. This newly established system will be included in DHS' inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy (*Privacy Policy Guidance Memorandum 2007–1,* most recently updated January 7, 2009), DHS extends administrative Privacy Act protections to all persons, regardless of citizenship, where a system of records maintains information on U.S. citizens and lawful permanent residents, as well as visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

Below is the description of the DHS/CBP—017 Analytical Framework for Intelligence (AFI) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/CBP—017 Analytical Framework for Intelligence (AFI).

SYSTEM NAME:

U.S. Customs and Border Protection (CBP) Analytical Framework for Intelligence (AFI).

SECURITY CLASSIFICATION:

Unclassified, Sensitive, Classified.

SYSTEM LOCATION:

Records are maintained within the Information Technology system called the Analytical Framework for Intelligence (AFI) at the CBP Headquarters in Washington, DC, field offices, and in locations overseas where users are stationed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Persons who are the subject of, related to, or associated with the subject of a finished intelligence product.

2. Persons whose information is responsive to a request for information (RFI).

3. Persons whose information is maintained in CBP systems described under the ''Record Source Categories'' below that are being indexed by AFI, such as:

A. Persons, including operators, crew and passengers, who seek to, or do in fact, enter, exit, or transit through the United States or through other locations where CBP maintains an enforcement or operational presence.

B. Crew members traveling on commercial aircraft that fly over the United States.

C. Persons who are employed in or who engage in any form of trade, the transit of goods intended to cross the United States border, or other commercial transaction related to the importation or exportation of merchandise.

D. Persons who serve as booking agents, brokers, or other persons who provide information on behalf of persons seeking to enter, exit, or transit through the United States, or to enter, exit or transit goods through the United States.

E. Owners of vehicles that cross the border.

F. Persons whose data was received by the Department as the result of a memorandum of understanding or other information sharing agreement or arrangement because the information is relevant to the border security mission of the Department.

G. Persons who were identified in a narrative report, prepared by an officer or agent, as being related to or associated with other persons who are alleged to be involved in, who are suspected of, or who have been arrested for violations of the laws enforced or administered by DHS.

H. Persons who are alleged to be involved in, who are suspected of, who have been arrested for, or who are victims of violations of the laws enforced or administered by DHS.

I. Persons with outstanding wants and warrants.

J. Persons associated with matches to threshold targeting rules.

K. Persons who may pose a national security, border security, or criminal threat to the United States.

L. Persons who seek to board an aircraft to travel internationally who have been identified by the Centers for Disease Control and Prevention (CDC), U.S. Health and Human Services, as ''No Boards'' because of a highly contagious communicable disease.

M. Persons traveling across U.S. borders or through other locations where CBP maintains an enforcement or operational presence and who have a nexus to a law enforcement action.

CATEGORIES OF RECORDS IN THE SYSTEM:

AFI uses information from a variety of federal and commercial systems. If additional data is ingested and that additional data does not require amendment of the categories of records in this SORN, the PIA for AFI will be updated to reflect that information. The updated PIA can be found at *www.dhs.gov/privacy.* Information from such source systems is incorporated into AFI's five general categories of records:

(1) *Finished intelligence products:* Intelligence products refer to tactical, operational, and strategic law enforcement intelligence products (hereinafter referred to as intelligence products). They include intelligence products that analysts have created based on their research and analysis of the source data contained in AFI and published in the system to make available as appropriate throughout CBP and DHS.

(2) *Requests for information (RFIs) and tasks and responses:* This includes requests for information or tasks (generic requests for work to be performed) that have been submitted through AFI. AFI will also store the responses to RFIs and those responses will fall in the same category of records as the RFIs unless the AFI analyst determines that a response should be converted to a finished intelligence product and makes it available more broadly.

(3) *Projects:* This includes projects created in AFI where an analyst can store source data for visualization and analysis and also share that information with other designated users. Projects may also contain analyst-compiled data from the source data described below and unfinished intelligence products that have not yet been published.

(4) *Index data:* AFI ingests subsets or portions of data from the CBP and DHS systems described in ''Record Source Categories'' and creates an index of the searchable data elements, as described below in ''source data.'' This index will indicate which source system records match the search term used, when a response to a query is compiled.

(5) *Source data:* AFI uses various types of data from CBP systems and other DHS systems as described in the individual system of records notices noted in ''Record Source Categories'' below. AFI also uses data from other federal agency systems and commercial data providers as noted in ''Record Source Categories.'' Data elements may include but are not limited to:

a. Name.
b. Alias.
c. Addresses.
d. Telephone and fax numbers.
e. Tax ID number (*e.g.,* Employer Identification Number (EIN) or Social Security Number (SSN), where available).
f. Seizure number.
g. Date and place of birth.
h. Gender.
i. Nationality.
j. Citizenship.
k. Physical characteristics, including biometrics where available (*e.g.,* height, weight, race, eye and hair color, scars, tattoos, marks, fingerprints).
l. Familial relationships and other contact information.
m. Occupation and employment information.
n. Information from documents used to verify the identity of individuals (*e.g.,* driver's license, passport, visa, alien registration, citizenship card, border crossing card, birth certificate, certificate of naturalization, re-entry permit, military card, trusted traveler cards) including the:
i. Type;
ii. Number;
iii. Date of issuance; and
iv. Place of issuance.
o. Travel information pertaining to individuals, including:
i. Information derived from an Electronic System for Travel Authorization (ESTA) application (where applicable) or I–94 arrival/departure information, where applicable;
ii. Travel itinerary (*e.g.,* Passenger Name Record (PNR)); Advance Passenger Information System (APIS) information; and land border records including information submitted in advance of arrival or departure);
iii. Date of arrival or departure, and means of conveyance with associated identification (*e.g.,* Vehicle Identification Number, year, make, model, registration);
iv. Payment information;
v. Any admissibility determination; and
vi. Law enforcement data associated with an individual which is created by CBP or other government agencies.
p. Information pertaining to the importation and exportation of cargo and/or property, including but not limited to bills of lading, manifests, commodity type, and inspection and examination results
q. Identity and geospatial information obtained from commercial systems used to cross reference information contained in CBP systems

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 118 Stat. 3638); The Tariff Act of 1930, as amended; The Immigration and Nationality Act (''INA''), 8 U.S.C. 1101, *et seq.;* the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53); the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132, 110 Stat. 1214); SAFE Port Act of 2006 (Pub. L. 109–347); Aviation and Transportation Security Act of 2001 (Pub. L. 107–71); 6 U.S.C. 202.

PURPOSE(S):

The purpose of this system is to enhance DHS's ability to: Identify, apprehend, and/or prosecute individuals who pose a potential law enforcement or security risk; aid in the enforcement of the customs and immigration laws, and other laws enforced by DHS at the border; and enhance United States security.

AFI uses data to:

(1) Identify individuals, associations, or relationships that may pose a potential law enforcement or security risk, target cargo that may present a threat, and assist intelligence product users in the field in preventing the illegal entry of people and goods, or identifying other violations of law;

(2) Allow analysts to conduct additional research on persons and/or cargo to understand whether there are patterns or trends that could identify potential law enforcement or security risks; and

(3) Allow finished intelligence product users with a need to know to query or receive relevant finished intelligence products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Source data are to be handled consistent with the published system of records notice as noted in ''Source Category Records.'' Source data that is not part of or incorporated into a finished intelligence product, a response to an RFI, project, or the index shall not be disclosed out of AFI. The routine uses below apply only to

finished intelligence products, responses to RFIs, projects, and responsive compilations of the index and only as explicitly stated in each routine use. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the AFI records contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

This routine use applies to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains. This routine use applies to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906 and for records that NARA maintains as permanent records. This routine use applies to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function. This routine use applies to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individuals that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS' efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This routine use applies to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees. This routine use applies to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

G. To the federal, state, local, tribal, or foreign government agencies or multilateral governmental organizations that submit an RFI, in order to identify individuals who present a risk to national security or to identify, apprehend, and/or prosecute individuals who are suspected of violating a law, where DHS has information responsive to the RFI and has determined that it is appropriate to provide that information in response to the RFI. This routine use applies to all responses to RFIs.

H. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, agreement, or treaty where DHS determines that the information would assist in the enforcement of civil or criminal laws. This routine use applies only to finished intelligence products.

I. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (*e.g.* to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk). This routine use applies only to finished intelligence products, responses to RFIs, and responsive compilations of the index.

J. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil or criminal discovery, litigation, or settlement negotiations, or in response to a subpoena from a court of competent jurisdiction. This routine use applies to all AFI records, which include finished intelligence products, responses to RFIs, projects, and responsive compilations of the index.

K. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation. This routine use applies only to finished intelligence products.

L. To a federal, state, local, tribal, or foreign governmental agency or multilateral governmental organization for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual. This routine use applies only to finished intelligence products and responses to RFIs.

M. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be relevant in countering the threat or potential threat. This routine use applies only to finished intelligence products.

N. To a federal, state, tribal, or local agency, or other appropriate entity or

individual, or foreign governments, in order to provide relevant information related to intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive. This routine use applies only to finished intelligence products.

O. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, or where the information is relevant and necessary to the protection of life or property. This routine use applies only to finished intelligence products.

P. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit. This routine use applies only to finished intelligence products.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. This routine use applies only to finished intelligence products.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by any search term, including name, personal identifier, date, subject matter or other criteria.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Two principal types of users will access AFI: DHS analysts and DHS finished intelligence product users. DHS Analysts will use the system to obtain a more comprehensive view of data available to CBP, and then analyze and interpret that data using the visualization and collaboration tools accessible in AFI. Finished intelligence product users are officers, agents, and employees of DHS who have been determined to have a need to know based on their job description and duties. Finished intelligence product users will have more limited access to AFI, will not have access to the research space or tools, and will only view finished tactical, operational, and strategic intelligence products that analysts published in AFI. Finished intelligence product users are not able to query the data from the source systems through AFI. If a finished intelligence product user requires the source data in order to take action or make a determination, he will be required to go to the source data to ensure that he is receiving the most accurate data available.

Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to AFI is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Source data contained in AFI that has not been incorporated into a finished intelligence product, response to an RFI, or project will follow the retention schedule set forth in the applicable source data system of records notice, as noted in ''Record Source Categories'' below.

AFI projects that do not contain PII are retained for 30 years and are then deleted. Projects containing PII must be recertified annually for up to 30 years or the entire record is purged from the system. Requests for information (RFIs) and responses to RFIs, excluding finished intelligence products, are retained for 10 years and are then deleted. Finished intelligence products are retained in accordance with the NARA-approved record retention schedule by first maintaining the products as active in the system for a period of 20 years, and then transferring the records to the National Archives for permanent storage and retention. The index is maintained within AFI as a permanent feature. Any changes to source system records, or the addition or deletion of source system records, will be reflected in corresponding amendments to the AFI index as the index is routinely updated. Legacy indices that are part of a project, responses to RFI, or finished intelligence product are maintained as part of those records.

SYSTEM MANAGER AND ADDRESS:

Director of Advanced Analytics & Intelligence Systems, Office of Intelligence and Investigative Liaison, U.S. Customs and Border Protection, Ronald Reagan Building and Director, Targeting and Analysis, Systems Program Office, Office of Information and Technology, U.S. Customs and Border Protection.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. These exemptions also apply to the extent that information in this system of records is recompiled or is created from information contained in other systems of records. To the extent that a record is exempted in a source system, the exemption will continue to apply. However, CBP will consider individual requests to determine whether or not information may be released. After conferring with the appropriate component or agency, as applicable, DHS may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement purposes of the systems from which the information is recompiled or in which it is contained. Additionally, CBP and DHS are not exempting any records that were ingested or indexed by AFI where the source system of records already provides access and/or amendment under the Privacy Act. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or CBP's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component

maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA Operations, *http://www.dhs.gov* or 1–703–235–0790. In addition you must:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;
- If your request is seeking records pertaining to another living individual, include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

AFI receives records and incorporates portions of records into an index of those records. Records are incorporated from the following CBP and DHS systems:

- ATS (last SORN published at 72 FR 43650 (August 6, 2007));
- APIS (last SORN published at 73 FR 68435 (November 18, 2008));
- ESTA (last SORN published at 76 FR 67751 (November 2, 2011));
- Border Crossing Information (BCI) (last SORN published at 73 FR 43457 (July 25, 2008));
- TECS (last SORN published at 73 FR 77778 (December 19, 2008));
- Nonimmigrant Information System (NIIS) (last SORN published at 73 FR 77739 (December 19, 2008));
- Seized Asset Case Tracking System (SEACATS) (last SORN published at 73 FR 77764 (December 19, 2008));
- Department of Homeland Security/All-030 Use of the Terrorist Screening Database System of Records (last SORN published at 76 FR 39408 (July 6, 2011));
- Enterprise Management Information System—Enterprise Data Warehouse (EMIS–EDW), including:

a. Arrival and Departure Form (I–94) information from the Nonimmigrant Information System (NIIS) (last SORN published at 73 FR 77739 (December 19, 2008));

b. Currency or Monetary Instruments Report (CMIR) obtained from TECS (last SORN for TECS published at 73 FR 77778 (December 19, 2008));

c. Apprehension information and National Security Entry-Exit Program (NSEERS) information from ENFORCE (last SORN published at 75 FR 23274 (May 3, 2010));

d. Seizure information from SEACATS (last SORN published at 73 FR 77764 (December 19, 2008));

e. Student and Exchange Visitor Information System (SEVIS) information (last SORN published at 75 FR 412 (January 5, 2010)); and

AFI accesses records from the following agencies, but the records are not part of the index:

- Department of State;
- Department of Justice/FBI;
- Department of Treasury; and
- Commercial information from commercial data providers and geospatial data providers.

Additionally, AFI permits analysts to upload and store any information from any source including public and commercial sources, which may be relevant to projects, responses to RFIs, or final intelligence products. Accepted requests for information may come from within or outside DHS where CBP determines it has responsive information and it is consistent with the purposes of this system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

For index data and source data, as described under Categories of Records, to the extent that a record is exempted in a source system, the exemption will continue to apply. To the extent there is no exemption for giving access to a record under the source system, CBP will provide access to the information maintained in AFI.

Finished intelligence products, RFIs, tasks, and responses, and projects, as described under Categories of Records, pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act, are exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g).

Finished intelligence products, RFIs, tasks, and responses, and projects, as described under Categories of Records, pursuant to 5 U.S.C. 552a(k)(1) and (2), are exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

Dated: June 4, 2012.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2012–13813 Filed 6–6–12; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–829, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–829, Petition by Entrepreneur to Remove Conditions.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 6, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–829. Should USCIS decide to revise Form I–829, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–829.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated

response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email please add the OMB Control Number 1615–0045 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–829. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence, and on the conditional residence for his or her spouse and child(ren).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 441 responses at 1 hour and 5 minutes (1.08 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 476 annual burden hours.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: June 1, 2012.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–13784 Filed 6–6–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–601, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–601, Application for Waiver of Grounds of Inadmissibility.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on February 28, 2012, at 77 FR 12071, allowing for a 60-day public comment period. USCIS received no comments in connection with that publication.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer.

Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be directly submitted to DHS via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or email at *oira_submission@omb.eop.gov*. When submitting comments by email, please make sure to add OMB Control Number 1615–0029 in the subject box.

Note: The address listed in this information collection notice should only be used to submit comments concerning the revision of this notice. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

sponsoring the collection: Form I–601. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by U.S Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 30,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal at: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, telephone number 202–272–1470.

Dated: June 1, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–13816 Filed 6–6–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–646, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form G–646, Sworn Statement of Refugee Applying for Admission to the United States.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 9, 2012, at 77 FR 14407, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0097 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–646; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* USCIS uses the data collected through Form G–646 to determine eligibility for the admission of the applicants to the United States as refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,975 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone 202–272–8377.

Dated: May 14, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–13796 Filed 6–6–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–36]

Notice of Submission of Proposed Information Collection to OMB Public Housing Capital Fund Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is revising the Actual Modernization Cost Certificate (AMCC)—HUD Form 53001 contained within the Public Housing Capital Fund

Program collection OMB Control Number 2577–0157. The AMCC reports on actual cost of modernization activities upon its completion. The grant type title on the AMCC of Comprehensive Improvement Assistance Program and Comprehensive Grant Program will be changed to Capital Fund Program (CFP). The PHA certification section will have two check mark boxes added for the PHA to certify if the Single Audit Act (SAA) A–133 requirement applies to the CFP grant specified on the AMCC (1-check box for SAA requirement applicable, 1-check box for SAA requirement not applicable). The ''HUD Use Only section'' will remove ''the audited costs agree with the costs shown above'' due to numerous PHAs that are not subject to Independent Public Accountant (IPA) audit requirements.

DATES: *Comments Due Date:* July 9, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0157) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Housing Capital Fund Program.

OMB Approval Number: 2577–0157.

Form Numbers: HUD 5370, HUD 53001, HUD 50029, HUD 5460, HUD 52427, HUD 52484, HUD 52832, HUD 52396, HUD 52833, HUD–5087, HUD–51915, HUD–51915–A, HUD–5378, HUD–51971–I–II, HUD–52482, HUD–52483–A, HUD–52485, HUD–52651–A, HUD 52845, HUD 52846, HUD 50030, HUD 51000, HUD 52847, HUD 52849, HUD 52829, HUD 52830, HUD 53015, HUD 51001, HUD 51002, HUD 51003, HUD 51004, HUD 53001, HUD 5372, HUD 5370–EZ, HUD 5084, HUD–52828, HUD–52836, HUD 50071, HUD 5370–C1.

Description of the Need for the Information and Its Proposed Use: HUD is revising the Actual Modernization Cost Certificate (AMCC)—HUD Form 53001 contained within the Public Housing Capital Fund Program collection OMB Control Number 2577–0157. The AMCC reports on actual cost of modernization activities upon its completion. The grant type title on the AMCC of Comprehensive Improvement Assistance Program and Comprehensive Grant Program will be changed to Capital Fund Program (CFP). The PHA certification section will have two check mark boxes added for the PHA to certify if the Single Audit Act (SAA) A–133 requirement applies to the CFP grant specified on the AMCC (1-check box for SAA requirement applicable, 1-check box for SAA requirement not applicable). The ''HUD Use Only section'' will remove ''the audited costs agree with the costs shown above'' due to numerous PHAs that are not subject to Independent Public Accountant (IPA) audit requirements.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting burden	3,100	23.498		3.646	265,617

Total Estimated Burden Hours: 265,617.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 1, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–13777 Filed 6–6–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–04]

Privacy Act of 1974; Notification to Update an Existing Privacy Act System of Records, ''Grievance Records''

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification Amend an Existing System of Records.

SUMMARY: The U.S. Department of Housing and Urban Development is proposing to amend the system notice for, ''Grievance Records,'' to update the number of the system, to more accurately reflect its Department-wide scope of records collected by the systems, additional system disclosures and the addresses of the system locations and system managers to reflect changes that have occurred since the notice was last published. Accordingly, HUD proposes to amend the ''HUD–66: Grievance Records,'' system notice to read as follows. Nothing in the revised system notices indicates a change in authorities or practices regarding the collection and maintenance of information. Nor do the changes impact individuals' rights to access or amend their records in the systems of records. This notice deletes and supersedes notice previously published on September 11, 1980 at 45 FR 27973.

DATES: *Effective Date:* This proposal shall become effective, without further notice, July 9, 2012, unless comments are received during or before this period

which would result in a contrary determination.

Comments Due Date: July 9, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Communications should refer to the above docket number and title. Fax comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m., weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act inquiries contact Donna Robinson-Staton, Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 402–8087. Regarding records maintained in Washington, DC 20410 contact the Director, Employee and Labor Relations Division, Office of Chief Human Capital Officer (OCHCO), Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. [The above are not toll free numbers.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services).

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be afforded a 30-day period in which to comment on the amended record system. The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' dated July 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: May 24, 2012.

Kevin R. Cooke,

Deputy Chief Information Officer.

HUD/OCHCO.01

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

The files are maintained at the following locations: U.S. Department of Housing and Urban Development Headquarters location, 451 7th Street SW., Washington, DC 20410; and HUD field offices located in the following cities: Washington, DC; Boston, MA; New York, NY; Philadelphia, PA; Chicago, IL; Atlanta, GA; Fort Worth, TX; Denver, CO; Seattle, WA; San Francisco, CA; and Los Angeles, CA. (See also on HUD's privacy Web site, Appendix II for the addresses of the above Field Offices where Privacy Act records may in some cases be maintained or accessed).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former HUD employees who have submitted grievances in accordance with part 771 of OPM regulations (5 CFR part 771), HUD regulations, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to internal grievances filed by agency employees with any part of the Department. These case files contain all documents related to the grievance, including, but not limited to statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes copies of files and records of internal grievance and arbitration systems that HUD may establish through negotiations with recognized labor organizations. This system also includes, contact information, on HUD employees responsible for processing grievance requests, such as position/job title, org code, office phone number and work email address and work address, and office stop. Additional records will include any other contact information for witnesses, interviewers, examiners and employee representatives of the grievant. HUD captures a unique non-indentifying piece of information called, a grievance control number. The only personal information collected on the above people would be their name. Other identifying information is dependent upon the specific nature of the topic being grieved and may involve the collection of personal data from the grievant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR part 1954–1958 Comp., p. 218, EO 10987, 3 CFR parts 1959–1963 Comp., p. 519.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: THESE RECORDS AND INFORMATION IN THESE RECORDS MAY BE USED:

Records in the system will be disclosed as follows. In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act other routine uses include:

1. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

2. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2004 and 2908.

3. To the Department of Justice (DOJ) when seeking legal advice or for use in any proceeding, or in preparation for any proceeding, when HUD or any component thereof disclose information to DOJ during the course of an investigation to the extent necessary to obtain information pertinent to the investigation under applicable HUD administered Rental Housing Assistance Programs.

4. To HUD contractors for the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and reporting requirements relevant to this system of records. Individuals provided information under this routine use is subject to Privacy Act requirement and limitation on disclosures as are applicable to HUD officials and employees.

5. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

6. To any individual (in the course of processing a grievance) from which additional information is relevant to the adjudication and/or the course of processing a grievance, to the extent necessary to identify the individual, inform the individual of the purpose(s) of the request for the information and to identify the type of information requested. This routine use is compatible to the purpose because it is necessary to disclose information that is appropriate for proper performance of the official duties of the officer making the disclosure.

7. To Federal agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation

of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

8. To a court when the Government is party to a judicial proceeding before the court.

9. To any individual's in the form of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. (Note: While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.)

10. To the Office of Personnel Management (OPM), the Merit Systems Protection Board (and its office of the Special Counsel), the Federal Labor Relations Authority (and its General Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

11. To a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

12. To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

13. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach. (See also on HUD's privacy Web site, Appendix I for other ways that the Privacy Act permits HUD to use or disclose system records outside the agency).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are currently maintained in hardcopy file folders. There is currently no electronic storage of any grievance records.

RETRIEVABILITY:

These hardcopy file records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Currently, these hardcopy file records are maintained in locked metal filing cabinets to which only authorized personnel have access. There are no current electronically stored file folders.

RETENTION AND DISPOSAL:

These hardcopy file records are disposed of 3 years after closing of the case. Disposal is by shredding or burning. See OCHCO Handbook 2225.6, Rev-1, CHG–23, Appendix 3, ''Records Disposition Schedule 3'', Item 8–1, dated July 1996.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Employee and Labor Relations Division, Office of Chief Human Capital Officer (OCHCO), Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to, Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410. Provide verification of your identity by providing two proofs of identification. Your verification of identity must include your original signature and must be notarized.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed an individual may request access to the official copy of the grievance file. The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Officer at the appropriate location.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. The Department's rules for contesting the contents of records and appealing initial denials by the individual concerned appear in 24 CFR part 16.

(I) CONTESTING CONTENT OF RECORDS:

The Chief Privacy Officer, Department of Housing and Urban Development; 451 Seventh Street SW., Room 4156, Washington, DC 20410, if contesting the content of records; or

(II) APPEALS OF INITIAL HUD DETERMINATIONS:

The Departmental Privacy Appeals Office, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410 for in relation to appeals of initial denials,

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

Records source are individuals who file a grievance; by testimony of witnesses, by agency officials, grievance examiners, and/or arbitrators, and by related correspondence from organizations or persons.

EXEMPTIONS FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 2012–13776 Filed 6–6–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Request for Nominations

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice

SUMMARY: The *Exxon Valdez* Oil Spill Trustee Council is soliciting nominations for the Public Advisory Committee, which advises the Trustee

Council on decisions related to the planning, evaluation, and conduct of injury assessment, restoration, long-term monitoring, and research activities using funds obtained as part of the civil settlement pursuant to the T/V *Exxon Valdez* oil spill of 1989. Public Advisory Committee members will be selected to serve a 24-month term beginning in October 2012.

DATES: All nominations should be received on or before August 3, 2012.

ADDRESSES: Nominations should be sent to Executive Director, *Exxon Valdez* Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501–2340 or by email to PAC Nominations, Executive Director, c/o Cherri Womac, *cherri.womac@alaska.gov*.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska 99501, 907–271–5011; or Cherri Womac, *Exxon Valdez* Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501–2340, 907–278–8012 or 800–478–7745. A copy of the charter for the Public Advisory Committee is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Committee was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Committee will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Committee consists of 10 members representing the public at large and the following special interests: Aquaculturist/mariculturist, commercial fisher, commercial tourism business person, recreation user, conservationist/environmentalist, Native landowner, sport hunter/fisher, subsistence user, and scientist/technologist.

Nominees need to submit the following information to the Trustee Council:

1. Nominee's full legal name;
2. Nominee's email address;
3. Nominee's home mailing address;
4. Nominee's home telephone number;
5. Special interests the nominee represents;
6. A resume or one-page synopsis of the nominee's:
   a. Date of birth;
   b. Education;
   c. Affiliations;
   d. Knowledge of the region, peoples or principal economic and social activities of the area affected by the T/V *Exxon Valdez* oil spill;
   d. expertise in public lands and resource management, if any;
   e. breadth of experience and perspective and length of experience in one or more of the special interests; and
7. Indicate if the person being nominated has been contacted and agrees to consider serving if selected.

Dated: June 4, 2012.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2012–13821 Filed 6–6–12; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–WSR–2012–N137; FVWF941009000007B–XXX–FF09W11000/ FVWF51100900000–XXX–FF09W11000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Wildlife and Sport Fish Grants and Cooperative Agreements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on August 31, 2012. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before July 9, 2012.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email). Please include ''1018–0109'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0109.

Title: Wildlife and Sport Fish Grants and Cooperative Agreements, 80, 81, 84, 85, and 86.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; the territories of Guam, U.S. Virgin Islands, and American Samoa; federally-recognized tribal governments; institutions of higher education; and nongovernmental organizations.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: We require applications annually for new grants. We require amendments on occasion when key elements of a project change. We require quarterly and final performance reports in the National Outreach and Communication Program and annual and final performance reports in the other programs. We may require more frequent reports under the conditions stated at 43 CFR 12.52 and 43 CFR 12.914.

Activity	Number of respondents	Number of responses	Completion time per response (in hours)	Total annual burden hours
Initial Application (project narrative)	200	2,500	40	100,000
Revision of Award Terms (Amendment)	150	1,500	2	3,000
Performance Reports	200	3,500	6	21,000
Totals	550	7,500	.....	124,000

Abstract: The Wildlife and Sport Fish Restoration Program (WSFR), U.S. Fish and Wildlife Service, administers financial assistance programs (see 77 FR 3489, January 24, 2012). We award most financial assistance as grants, but cooperative agreements are possible if the Federal Government will be substantially involved in carrying out the project. You can find a description of most programs in the Catalog of Federal Domestic Assistance.

To apply for financial assistance funds, you must submit an application that describes in substantial detail project locations, benefits, funding, and other characteristics. Materials to assist applicants in formulating project proposals are available on Grants.gov. We use the application to determine:

- Eligibility for the grant.
- Scale of resource values or relative worth of the project.
- Effect of the project on environmental and cultural resources.
- How well the proposed project will meet the purposes of the program's establishing legislation.

Persons or entities receiving grants must submit periodic performance reports that contain information necessary for us to track costs and accomplishments.

Comments: On January 24, 2012, we published in the **Federal Register** (77 FR 3489) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on March 26, 2012. We received one comment. The commenter objected to the funding of these grants, but did not address the information collection requirements. We did not make any changes to our requirements.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: May 31, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–13792 Filed 6–6–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N138: FX3ES11130300000D2–123–FF03E00000]

Proposed Information Collection; Bald Eagle Post-delisting Monitoring

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2012. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by August 6, 2012.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *INFOCOL@fws.gov* (email). Please include ''1018–0143'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *INFOCOL@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection implements the requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA). There are no corresponding Service regulations for the ESA's post-delisting monitoring requirement.

The bald eagle (*Haliaeetus leucocephalus*) in the lower 48 States was removed from the List of Endangered and Threatened Wildlife (delisted) on August 8, 2007 (72 FR 37346, July 9, 2007). Section 4(g) of the ESA requires that all species that are recovered and removed from the List of Endangered and Threatened Wildlife be monitored in cooperation with the States for a period of not less than 5 years. The purpose of this requirement is to detect any failure of a recovered species to sustain itself without the protections of the ESA. We work with relevant Federal, State, and tribal entities, and other species experts to develop plans and procedures for systematically monitoring recovered wildlife and plants after a species is delisted.

The bald eagle has a large geographic distribution that includes a substantial amount of non-Federal land. Although the ESA requires that monitoring of recovered species be conducted for not less than 5 years, the life history of bald eagles is such that it is appropriate to monitor this species for a longer period of time in order to meaningfully evaluate whether or not the bald eagle

continues to maintain its recovered status.

We plan to monitor the status of the bald eagle in the 48 contiguous States by collecting data on nests over a 20-year period with sampling events held once every 5 years. The Post-delisting Monitoring Plan for the Bald Eagle (Plan) describes monitoring procedures and methods. The Plan is available at *http://www.fws.gov/midwest/eagle/protect/FINAL_BEPDM11May2010.pdf*. We will use the monitoring data to review the status of the bald eagle in the United States and determine if it remains recovered and, therefore, does not require the protections of the ESA.

II. Data

OMB Control Number: 1018–0143.

Title: Bald Eagle Post-delisting Monitoring.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States, tribes, and local governments; Federal land managers; and nongovernmental partners.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once every 5 years.

Note: For each 5-year survey, we estimate a total of 48 respondents will provide 48 responses totaling 1,478 burden hours. The burden estimates below are annualized over the 3-year period of OMB approval.

Estimated Annual Number of Respondents: 16.

Estimated Total Annual Responses: 16.

Estimated Time per Response: 30.8 hours.

Estimated Total Annual Burden Hours: 493.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 31, 2012.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2012–13793 Filed 6–6–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY910000.L16100000.XX0000]

Notice of Public Meeting; Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

DATES: Wednesday, July 11 (7:30 a.m.–5:00 p.m.) and Thursday, July 12 (7:30 a.m.–4 p.m.), 2012.

ADDRESSES: The Cody Hotel, 232 West Yellowstone Avenue, Cody, Wyoming.

SUPPLEMENTARY INFORMATION: This 10-member RAC advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming. All RAC meetings are open to the public. Public comments will be accepted at the end of the second day for this meeting. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. The public may also submit written comments to the RAC.

On July 11, a field tour of the McCullough Peaks Herd Management Area will be followed by a panel discussion on the BLM's wild horse partnership with Friends of a Legacy and Marathon Oil, water projects, porcine zona pellucida and the overall wild horse program; a RAC business session; and a presentation on fire and fuels. On July 12, a field tour to North Fork/Rattlesnake Mountain will be followed by continued discussion of RAC business; an overview of the BLM Wyoming Wind River/Bighorn Basin District and Cody Field Office; and a travel management planning process discussion.

The public may attend the field tour portions of the agenda, but must provide their own transportation. High clearance vehicles are recommended.

FOR FURTHER INFORMATION CONTACT: Cindy Wertz, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353 Yellowstone, Cheyenne, WY 82009; telephone 307–775–6014; email *cwertz@blm.gov*. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Donald A. Simpson,

State Director.

[FR Doc. 2012–13782 Filed 6–6–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities; Renewal of a Currently Approved Information Collection (OMB Control Number 1006–0029)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: The Bureau of Reclamation intends to submit a request for renewal of an existing approved information collection to the Office of Management and Budget (OMB): Reclamation Rural Water Supply Program (OMB Control Number 1006–0029). Title 43 CFR part 404 requires entities interested in participating in the Rural Water Supply Program (Rural Water Program) to submit information to allow Reclamation to evaluate and prioritize requests for financial or technical assistance.

DATES: Submit written comments by August 6, 2012.

ADDRESSES: Send written comments on this information collection to Christopher Perry, Bureau of Reclamation, 84–55000, P.O. Box 25007, Denver, CO 80225; or to *cperry@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Perry, 303–445–2887.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Rural Water Program is to provide assistance to small communities of 50,000 inhabitants or less, including tribes and tribal organizations, to plan the design and construction of projects to serve rural areas with industrial, municipal, and residential water. Specifically, the Bureau of Reclamation (Reclamation) is authorized to provide financial and technical assistance to conduct appraisal investigations and feasibility studies for rural water supply projects. Reclamation's regulation, 43 CFR part 404, establishes criteria governing how the program will be implemented, including eligibility and prioritization criteria, and criteria to evaluate appraisal and feasibility studies. Entities interested in participating in the Rural Water Program are requested to submit information regarding proposed appraisal investigation and feasibility studies, to allow Reclamation to evaluate and prioritize requests for financial or technical assistance under the program. Reclamation will apply the program criteria to the information provided to determine whether the entity seeking assistance is eligible, whether the project is eligible for assistance, and to what extent the project meets Reclamation's prioritization criteria. Requests for assistance under the Rural Water Program will be made on a voluntary basis. There is no form associated with this information collection.

II. Data

OMB Control Number: 1006–0029.

Title: Reclamation Rural Water Supply Program.

Frequency: Once annually.

Respondents: States, tribes, municipalities, water districts, and other entities created under State law with water management authority.

Estimated Annual Total Number of Respondents: 185.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Annual Responses: 56.

Estimated Total Annual Burden on Respondents: 2,100 hours.

III. Request for Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

IV. Public Disclosure

Before including your name, 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: June 1, 2012.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2012–13797 Filed 6–6–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

Proposed Renewal of Information Collection: OMB Control Number 1035–0003, Application To Withdraw Tribal Funds From Trust Status

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians, Department of the Interior, announces the proposed renewal of a public information collection required by The American Indian Trust Fund Management Reform Act of 1994, ''Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200,'' OMB Control No. 1035–0003, and that it is seeking comments on its provisions. After public review, the Office of the Special Trustee for American Indians will submit the information collection to Office of Management and Budget for renewal.

DATES: Consideration will be given to all comments received by August 6, 2012.

ADDRESSES: Written comments and recommendations on this information collection should be sent to the Office of the Special Trustee, Office of External Affairs, Attn: Patricia Diane Johnson, 4400 Masthead St. NE., Room 323, Albuquerque, New Mexico 87109. You may also email comments to *patricia_d_johnson@ost.doi.gov*. Individuals providing comments should reference OMB control number 1035–0003, ''Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.''

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection or to obtain a copy of the collection instrument, please write to the above address.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d). This notice identifies an information collection activity that the Office of the Special Trustee for American Indians is submitting to OMB for renewal.

Public Law 103–412, The American Indian Trust Fund Management Reform Act of 1994, allows Indian tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage such funds on their own. 25 CFR part 1200, subpart B, Sec. 1200.13, ''How does a tribe apply to withdraw funds?'' describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government) have no further liability for such funds. Accompanying their application for withdrawal of trust funds, tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the Office of the Special Trustee to collect

the tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If this information were not collected, the Office of the Special Trustee would not be able to comply with the American Indian Trust Fund Management Reform Act of 1994, and tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

II. Data

(1) *Title:* Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

OMB Control Number: 1035–0003.

Current Expiration Date: November 30, 2012.

Type of Review: Information Collection Renewal.

Affected Entities: State, Local and Tribal Governments.

Estimated annual number of respondents: 1.

Frequency of response: Once per respondent.

(2) *Annual reporting and recordkeeping burden:*

Total annual reporting per respondent: 400 hours.

Total annual reporting: 400 hours.

(3) *Description of the need and use of the information:* The statutorily-required information is needed to provide a vehicle for tribes to withdraw funds from accounts held in trust for them by the United States Government.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and 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 through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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 Office of Management and Budget control number.

Dated: May 30, 2012.

James P. Barham,

Director, Office of External Affairs, Office of the Special Trustee for American Indians.

[FR Doc. 2012–13857 Filed 6–6–12; 8:45 am]

BILLING CODE 4310–2W–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–772]

Certain Polyimide Films, Products Containing Same, and Related Methods; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order with respect to the accused products of respondents SKI Kolon PI, Inc. and SKC, Inc.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on May 10, 2012. Comments should address whether issuance of an exclusion order and a cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 15, 2012.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–772'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

Issued: June 1, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–13718 Filed 6–6–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on May 31, 2012, two proposed consent decrees in *U.S.* v. *Jacob Goldberg & Son, Inc., et al.,* Civil Action No. 10 Civ. 3237, were lodged with the United States District Court for the Southern District of New York.

In this action the United States sought recovery, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* of response costs regarding the Port Refinery Superfund Site in the Village of Rye Brook, N.Y. (''Site''). One of the settlements, referred to as the ''Second Partial Consent Decree,'' provides for PSC Metals, Inc. and PSC Metals–New York, LLC to pay $225,000, and resolves the United States' claims against these defendants regarding the Site. The other settlement, referred to as the ''Third Partial Consent Decree,'' provides for Vincent A. Pace Scrap Metals, Inc. to pay $20,000 and also resolves the United States' claims against this defendant regarding the Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the two consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Jacob Goldberg & Son, Inc., et al.,* D.J. Ref. 90–11–3–1142/1.

During the public comment period, the two consent decrees may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the two consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*eescdcopy.enrd@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–5271. If requesting copies of the two settlements from the Consent Decree Library by mail, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–13761 Filed 6–6–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Amendment to First Amended Consent Decree Under the Clean Water Act

Notice is hereby given that on May 31, 2012, a proposed Second Amendment to First Amended Consent Decree (''Amendment'') in *United States and State of Georgia* v. *City of Atlanta,* Civil Action No. 1:98–CV–1956–TWT, was lodged with the United States District Court for the Northern District of Georgia.

In this action the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), and the State of Georgia, at the request of Environmental Protection Division (''EPD'') sought penalties and injunctive relief under the Clean Water Act (''CWA'') against the City of Atlanta (''Defendant'') relating to Defendant's wastewater treatment facilities and the Defendant's wastewater collection and transmission system. The complaint alleged that Defendant violated the CWA, 33 U.S.C. 1251 *et seq.,* and the Georgia Water Quality Control Act, O.C.G.A. § 12–5–21 *et seq.* (''GWQCA''). On December 22, 1999, the Court entered the First Amended Consent Decree (''Decree''), resolving the allegations in the complaint regarding the Defendant's wastewater treatment facilities and Defendant's collection and transmission system. On April 28, 2003, the Court entered Amendments to the Decree to allow the substitution of certain projects required under the Decree.

Defendant satisfied obligations under the Section VII Decree and the Court terminated the Decree on March 31, 2004 as to those obligations. Defendant has completed the majority of the work requirements of the Decree and has made substantial reductions in the total volume of sewage overflows. In order to comply with the requirements of the Decree, the Defendant has raised water and sewer rates by 252% over the past ten years. In addition, a 1% municipal option sales tax within the boundaries of the City of Atlanta has been imposed to contribute to the financing of the City's obligations under the Decree.

Despite the Defendant's efforts and the increase in financing to support those efforts, the Defendant requested a thirteen year extension of the schedule set forth in the Decree to complete the remaining work, due to the financial circumstances the Defendant is facing. The Plaintiffs evaluated the Defendant's financial information and model and the financial condition the Defendant is facing and determined that, based on all

of the circumstances, the Defendant's request for an extension was reasonable.

Documents relative to the Decree, including the proposed Amendment, can be accessed at *www.cleanwateratlanta.org.* See, specifically, City of Atlanta, First Amended Consent Decree, 1:98–CV–1956–TWT, Financial Capability-Based Amendment & Schedule Extension Request. Further information pertaining to the Defendant's water system can be accessed at *www.atlantawatershed.org.*

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Georgia* v. *City of Atlanta,* D.J. Ref. 90–5–1–1–4430. During the public comment period, the Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Second Amendment to First Amended Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.750 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–13827 Filed 6–6–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Pharmboy Ventures Unlimited, Inc., Decision and Order

On August 26, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Pharmboy Ventures Unlimited, Inc., d/b/a Brent's Pharmacy and Diabetes Care (Applicant), of St. George, Utah. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a retail pharmacy, on the ground that its ''registration would be inconsistent with the public interest.'' Show Cause Order, at 1 (citing 21 U.S.C. 823(f)).

The Show Cause Order alleged that on February 28, 2011, Applicant submitted an application for a DEA Registration as a retail pharmacy and that while applicant is owned by Caroline McFadden, her husband Brent McFadden is Applicant's pharmacist-in-charge and sole pharmacist. The Show Cause Order then alleged that in 2010, Brent McFadden, while working as a pharmacist at Lin's Pharmacy, had unlawfully taken phentermine, a schedule IV controlled substance, from the pharmacy's stock and ingested it; the Order also alleged that Brent McFadden had failed to document the disposition of the phentermine he had taken. *Id.* at 1–2 (citing 21 U.S.C. 844; 827; 21 CFR 1304.22(c); 1306.06; 1306.21). The Order also alleged that while working as a pharmacist at Lin Pharmacy, Mr. McFadden had, on four or more occasions when it was open to the public, left the pharmacy unattended by a pharmacist, in violation of Utah Admin. Code R156–1–102a. *Id.* at 2.

Next, the Show Cause Order alleged that based on the various acts set forth above, on October 27, 2010, the Utah Division of Occupational and Professional Licensing (DOPL) issued a consent order to Mr. McFadden placing his pharmacist's license on probation for three years. *Id.* The Order also alleged that on January 20, 2011, Mr. McFadden had pled no contest to seven state law counts of making or altering a false prescription based on his conduct in taking phentermine from Lin's Pharmacy, and that he had been sentenced to eighteen-months' probation, fined, and ordered to undergo a substance abuse evaluation. *Id.* (citing Utah Code Ch. 58, § 37(3)(a)(iii)). Finally, the Order alleged that Mr. McFadden had engaged in such other conduct which may threaten public health and safety because he ''took and consumed legend drugs and food items'' from his former employer without paying for them, and that because of the aforementioned acts, he was terminated from his employment. *Id.* (citing 21 U.S.C. 823(f)(5)).

The Show Cause Order, which also notified Applicant of its right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing either option, and the consequences for failing to do either, *id.* at 2–3 (citing 21 CFR 1301.43); was served on Applicant by certified mail, return receipt requested, addressed to it at the address of its proposed registered location. GX C. As evidenced by the signed return receipt card, service was accomplished on September 2, 2011. Since that date, more than thirty days have now passed, and neither Applicant, nor anyone purporting to represent it, has either requested a hearing or submitted a written statement in lieu of a hearing. Accordingly, I find that Applicant has waived its right to a hearing and issue this Decision and Order based on relevant evidence contained in the investigative record submitted by the Government. I make the following findings of fact.

Findings

On February 28, 2011, Applicant filed an application for a DEA Certificate of Registration as a retail pharmacy. GX A. Applicant's application was signed by Ms. Caroline McFadden. *Id.* In response to one of the application's liability questions, Applicant noted that ''Brent McFadden, corporate owner, charges of unprofessional conduct and unlawful conduct for leaving the pharmacy unattended for thirty minutes and for taking 7 phentermine tablets from pharmacy stock and injesting [sic] them.'' GX A.

Upon reviewing the application, a DEA Diversion Investigator (DI) noticed Applicant's statement regarding the action taken by the State of Utah against Brent McFadden. GX D, at 1. The DI learned that Applicant has a state pharmacy license and that Caroline McFadden was listed as the applicant and owner of the pharmacy. *Id.* at 1–2. The DI also obtained a report by a DOPL Investigator regarding an August 17, 2010 interview she did of Mr. McFadden, who had previously worked at the pharmacy in Lin's Supermarket, a grocery store located in St. George, Utah. *Id.;* GX F, at 1.

During the interview, Mr. McFadden admitted that he had taken both phentermine, a schedule IV stimulant, and Maxzide (Triamterene-HCTZ), a non-controlled legend drug used as a diuretic, from the store's pharmacy, where he had been employed for sixteen years. GX D, at 2. With respect to his use of phentermine, Mr. McFadden initially claimed that the drug had been prescribed to him by J.R.M., a physician's assistant and neighbor of his. *Id.* However, Mr. McFadden later admitted that J.R.M. had not treated him

and that he had taken the phentermine on his own. *Id.* Mr. McFadden admitted that he had taken a total of thirty phentermine pills over the preceding two to three months. *Id.* In a written statement he made on August 17, 2010, Mr. McFadden asserted that he had taken the 30–35 phentermine tablets ''over a [two] month period'' based ''upon a verbal recommendation from a doctor.'' GX G, at 2. Mr. McFadden further stated that he paid for the drugs ''but an RX was never written.'' *Id.* Finally, McFadden claimed that he had repaid the twelve to fifteen tablets of Maxzide by taking them out of his subsequent prescription. *Id.* at 1.

In addition, Mr. McFadden admitted that he had left the pharmacy unattended ''for a few minutes,'' on three or four occasions ''during the past two to four years,'' to get lunch or take a break because store policy did not allow for the pharmacy to close for lunch. GX F, at 2. However, upon being told by the State Investigator that it was reported that he had recently left the pharmacy for about 45 minutes, Mr. McFadden admitted that the week before, he had left the pharmacy, when no other pharmacist was in attendance, for 30 to 45 minutes to get lunch and run an errand. *Id.* Mr. McFadden denied, however, tampering with, or altering, the pharmacy's records when he removed tablets from the dispensing machine. *Id.*

On October 20, 2010, Mr. McFadden entered into a Stipulation and Order with the DOPL; the Order was subsequently approved by the DOPL's Director. GX M, at 10–11. Among the Order's findings were that ''[o]n or about August 17, 2010[,] [Mr. McFadden] admitted to a Division investigator that [he] had, on multiple occasions, taken Maxide [sic], a prescription only medication, and [p]hentermine, a Schedule IV controlled substance, from pharmacy stock for Respondent's own use. Respondent did not possess a valid prescription for the [p]hentermine.'' *Id.* at 3. Of note, the DOPL did not find that Mr. McFadden lacked a prescription for the Maxzide.

Mr. McFadden further stipulated that he ''recently left the pharmacy unattended for 30 to 45 minutes to run an errand and pick up lunch. [He] also admitted to the Division investigator that the practice of leaving the pharmacy unattended had occurred on three or four occasions in the past four years.'' *Id.* Mr. McFadden agreed that these (and other findings) constituted unprofessional conduct under Utah law and regulations, as well as unlawful conduct under Utah criminal law. *Id.* at 3–4.

The DI also developed evidence that Mr. McFadden was observed on the store's security cameras occasionally taking various food items, including bagels and fountain drinks, without paying for them. GX D, 3–4. Subsequently, based on his expropriation of drugs, the bagels, and fountain drinks, as well as his having left the pharmacy unattended, Lin's terminated Mr. McFadden. GX J.

In addition, Mr. McFadden was charged with seven felony counts of violating Utah Code § 58–37–8(3)(A)(III), which prohibits ''mak[ing] any false or forged prescription or written order for a controlled substance, or * * * utter[ing] the same, or * * * alter[ing] any prescription or written order'' for a controlled substance. GX H, at 5. However, Mr. McFadden was allowed to plead no contest, with his plea being held in abeyance, to seven misdemeanor counts of Utah Code § 58–37–8(3)(A)(III), as well as a single count of retail theft (also a misdemeanor), in violation of Utah Code § 76–6–602. *Id.* The court ordered that his pleas be held in abeyance for eighteen months, fined him $1,000, and ordered him to both undergo a substance abuse evaluation and to successfully complete any treatment program and provide proof of completion to the court. *Id.* at 6.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination in the case of a practitioner, which includes a retail pharmacy, *see id.* § 802(21), Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application. *Id.* Moreover, while I ''must consider each of these factors, [I] 'need not make explicit findings as to each one.' '' *MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009)); *see also Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005) (citing *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005)).

Having considered all of the factors,[1] I conclude that the Government's evidence with respect to Applicant's (more specifically, its pharmacist-in charge's) experience in dispensing controlled substances (factor two), his conviction record under laws relating to the distribution or dispensing of controlled substances (factor three), his compliance with applicable laws related to controlled substances (factor four), and his having engaged in other conduct which may threaten public health and safety (factor five), makes out a *prima facie* case to conclude that granting Applicant's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). Because Applicant has waived its right to a hearing and present evidence refuting this conclusion, its application will be denied.

Factors Two—The Applicant's Experience in Dispensing Controlled Substances, Factor Three—The Applicant's Conviction Record Under Federal or State Laws Relating to the Distribution or Dispensing of Controlled Substances, Factor Four—Applicant's Compliance With Applicable Laws Related to Controlled Substances, and Factor Five—Such Other Conduct Which May Threaten Public Health and Safety

As found above, the Utah DOPL found that Mr. Brent McFadden, Applicant's pharmacist-in-charge,[2] expropriated

[1] It is acknowledged that Applicant holds a state pharmacy license. However, the Agency has repeatedly held that while the possession of a state license is an essential condition for obtaining (and maintaining) a registration issued under 21 U.S.C. 823(f), it is not dispositive of the public interest inquiry. *Sun & Lake Pharmacy, Inc.,* 76 FR 24523, 24530 n.15 (2011).

[2] DEA has long held that it can look behind a pharmacy's ownership structure ''to determine who makes the decisions concerning the controlled substance business of a pharmacy.'' *Carriage Apothecary,* 52 FR 27599, 27599 (1987) (citing cases); *cf. Unarex of Plymouth Road, et al.,* 50 FR 6077, 6079–80 (1985) (revoking registration of pharmacy, whose pharmacist, transferred his ownership interest to his wife following his conviction for conspiracy to unlawfully distribute controlled substances; ''Pharmacists do not operate by themselves. They require human intervention to operate''); *Big-T Pharmacy, Inc.* 47 FR 51830, 51831

Continued

phentermine, a schedule IV controlled substance, from the stock of his former employer, which he ingested. The DOPL further found that Mr. McFadden did not have a prescription for the phentermine. These findings are entitled to preclusive effect in this proceeding. *See Robert L. Dougherty,* 76 FR 16823, 16830 (2011) (collecting cases).

Under the CSA, a controlled substance may only be dispensed ''pursuant to the lawful order [such as a prescription] of, a practitioner.'' 21 U.S.C. 802(21).[3] Mr. McFadden did not, however, have a prescription for phentermine. Thus, he unlawfully distributed phentermine to himself, which he then ingested. *See id.* § 829(b) (''Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act * * * may be dispensed without a written or oral prescription * * *.''); *id.* § 841(a)(1) (prohibiting the knowing distribution or dispensing of a controlled substance ''[e]xcept as authorized by'' the CSA). *See also* Utah Code § 58–17b–501(12) (prohibiting pharmacist from ''using a prescription drug or controlled substance for himself that was not lawfully prescribed for him by a practitioner''); *id.* § 58–37–6(7)(c)(i) (''A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.'').

Mr. McFadden also violated 21 U.S.C. 844(a), which makes it ''unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice,'' except as otherwise authorized by the CSA. *See also* Utah Code § 58–37–8(2)(a)(i) (same).

In addition, the DOPL found that Mr. McFadden violated the Utah Pharmacy Practice Act Rule, when he left the Lin's Pharmacy unattended on various occasions. *See* Utah Admin Code R156–17b–614(7). GX M, at 3. While this rule is applicable to pharmacy practice in general, given the evidence that controlled substances were dispensed (and obviously stored) at the pharmacy, the violations have a sufficient connection to the CSA's core purpose of preventing the diversion of controlled substances to be considered as ''such other conduct which may threaten public health and safety,'' 21 U.S.C. 823(f)(5), and are thus within the Agency's authority to consider under factor five.

Finally, the evidence also shows that Mr. McFadden pled no contest to seven misdemeanor counts of making a false or forged prescription or written order for a controlled substance or uttering the same, in violation of state law. Notwithstanding that his pleas are being held in abeyance, and thus the charges may eventually be dismissed, DEA has repeatedly held that a plea of no contest which is subject to deferred adjudication, nonetheless constitutes a conviction for purposes of the CSA. *See Kimberly Maloney, N.P.,* 76 FR 60922, 60922 (2011) (collecting cases). Nor does the fact that the charges were reduced to misdemeanors preclude consideration of his convictions under factor three, which, in contrast to 21 U.S.C. 824(a)(2), is not limited to felony offenses. *See* 21 U.S.C. 823(f)(3).

I thus conclude that the evidence with respect to factors two, three, four, and five[4] establishes that granting Applicant's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). And because Applicant waived its right to a hearing, there is no evidence to the contrary. Accordingly, I will deny Applicant's application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Pharmboy Ventures Unlimited, Inc., for a DEA Certificate of Registration as a retail pharmacy, be, and it hereby is, denied. This order is effective immediately.

Dated: May 4, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–13805 Filed 6–6–12; 8:45 am]

BILLING CODE 4410–09–P

(1982) (''Pharmacies must operate through the agency of natural persons, owners or stockholders, pharmacists or other key employees. When such persons misuse the pharmacy's registration by diverting controlled substances obtained thereunder, and when those individuals are convicted as a result of that diversion, the pharmacy's registration becomes subject to revocation under section 824, just as if the pharmacy itself had been convicted.''); *S & S Pharmacy, Inc.,* 46 FR 13051, 13052 (1981) (''In a retail pharmacy, * * * the registered pharmacist in charge of the pharmacy is responsible for ordering controlled substances; for keeping and maintaining the required records and inventories; for taking all necessary measures to prevent the loss and diversion of controlled substances; and for dispensing such substances only in accordance with applicable State and Federal laws. The corporate pharmacy acts through the agency of its * * * pharmacist in charge.'').

[3] *Cf.* 21 CFR 1306.03 (prescription may only be issued ''by an individual practitioner * * * authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession''); *id.* 1306.04(a) (''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of * * * professional practice.'').

[4] The Government seeks several additional findings that Mr. McFadden engaged in ''such other conduct which may threaten public health and safety.'' 21 U.S.C. 823(f)(5). More specifically, the Government alleges that ''[w]hile working as a pharmacist for Lin's Pharmacy, * * * Mr. McFadden took and consumed legend drugs and food items from the pharmacy without compensating the store for the use of such items,'' GX B, at 2, and that ''[i]n August 2010, Lin's Pharmacy terminated Mr. McFadden from working as a pharmacist there because he unlawfully took and consumed drugs and food items and left the pharmacy unattended by a pharmacist.'' Gov. Req. for Final Agency Action, at 10.

As for his former employer's termination of his employment, that decision is not conduct on his part but rather a response to his conduct. Moreover, his former employer's findings that he engaged in misconduct are not entitled to preclusive effect in this matter. Accordingly, an employer's termination decision clearly does not fall within the scope of factor five.

As for his expropriation of store property, there is no evidence refuting Mr. McFadden's claim that he paid for the phentermine or that he ''reimbursed'' the pharmacy by taking the Maxzide out of his subsequent refill, and the evidence regarding his plea to misdemeanor retail theft does not identify what items were involved. To be sure, Mr. McFadden admitted in a statement to having taken bagels and fountain drinks from his employer without paying for them. However, his acts have no apparent relationship to controlled substances, and the Government offers no explanation as to why being a bagel bandit constitutes a threat to public health and safety, let alone one that is of such a degree as to ''create reason to conclude that a person will not faithfully adhere to [his] responsibilities under the CSA.'' *Terese, Inc., d/b/a/ Peach Orchard Drugs,* 76 FR 46843, 46848 n.11 (2011).

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Voluntary Fiduciary Correction Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Voluntary Fiduciary Correction Program,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before July 9, 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–EBSA, Office of Management and Budget, New Executive Office Building, 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 Voluntary Fiduciary Correction Program provides a method for voluntary correction of specified types of transactions that violate (or are suspected of violating) the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 and for securing the Department's assurance that the agency will take no further action with respect to the corrected transaction. The exemption relieves applicants who make corrections under the Program of penalties under section 4975 of under the Internal Revenue Code under specified conditions.

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 Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0118. The current OMB approval is scheduled to expire on June 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 7, 2011 (76 FR 76439).

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 1210–0118. 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–EBSA.

Title of Collection: Voluntary Fiduciary Correction Program.

OMB Control Number: 1210–0118.

Affected Public: Private Sector—Businesses or other for profits.

Total Estimated Number of Respondents: 5,760.

Total Estimated Number of Responses: 119,761.

Total Estimated Annual Burden Hours: 25,920.

Total Estimated Annual Other Costs Burden: $1,174,000.

Dated: May 31, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–13748 Filed 6–6–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding States Triggering ''On'' or ''Off'' in the Emergency Unemployment Compensation 2008 (EUC08) Program and the Federal-State Extended Benefits (EB) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding states triggering ''on'' or ''off'' in the Emergency Unemployment Compensation 2008 (EUC08) program and the Federal-State Extended Benefits (EB) Program.

The U.S. Department of Labor (Department) produces trigger notices indicating which states qualify for both EB and EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for these programs can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp*.

The following changes have occurred since the publication of the last notice regarding states' EB and EUC08 trigger status:

- Based on data released by the Bureau of Labor Statistics on May 18, 2012, the District of Columbia, New York, and West Virginia no longer meet one of the criteria to remain ''on'' in EB, i.e., having their current three month average, seasonally adjusted total unemployment rate be at least 110% of one of the rates from a comparable prior period in one of the three prior years. This triggers these states ''off'' EB and the end of the payable period for these states in the EB program will be the week ending June 9, 2012.
- Based on data released by the Bureau of Labor Statistics on May 18, 2012, the three month average, seasonally adjusted total unemployment rate in Idaho fell below the 8.0% trigger threshold required to remain ''on'' in a high unemployment period (HUP) within the EB program. Claimants in this state will remain eligible for up to 20 weeks of benefits through June 9, 2012, but starting June 10, 2012, the maximum potential entitlement in the EB program for this state will decrease from 20 weeks to 13 weeks.
- Based on data released by the Bureau of Labor Statistics on May 18, 2012, the estimated three month average, seasonally adjusted total unemployment rate for New York rose

to meet the 8.5% trigger threshold to trigger ''on'' in Tier 4 of the EUC 2008 program. The 13 week mandatory ''on'' period in New York for Tier 4 of the EUC program will begin June 4, 2012. As a result, the current maximum potential entitlement in the EUC program will increase from 47 weeks to 53 weeks.

- States that are triggered ''on'' to Tier 4 of the EUC08 program, but not triggered ''on'' to EB, may be eligible to augment the entitlement for new Tier 4 claimants with a maximum potential duration of 16 weeks. This ability to augment the entitlement of new Tier 4 claimants concluded with the week ending May 26, 2012. Starting May 27, 2012, all claimants exhausting Tier 3 who establish entitlement in Tier 4 will only be eligible for up to 6 weeks of benefits. Claimants who had previously been augmented with 16 weeks of benefits can continue to draw those benefits. States currently affected by this provision are Arizona, California, Florida, Georgia, Illinois, Kentucky, Michigan, Mississippi, North Carolina, Oregon, Puerto Rico, and South Carolina.

Under Public Law 112–96, the current total unemployment rate trigger thresholds used to establish state eligibility for the tiers of EUC are scheduled to change. Currently, and through the week ending May 26, 2012, Tiers 1 and 2 do not require any specific TUR trigger rate, Tier 3 requires a 6% TUR trigger rate and Tier 4 requires an 8.5% TUR trigger rate. The current trigger notices reflect state eligibility under these TUR trigger rate thresholds. With the week beginning May 27, the following changes will take effect:

- Tier 1 will continue to be open to all claimants with EUC eligibility, with no changes.
- Tier 2 will require states to have at least a 6% TUR trigger rate.
- Tier 3 will require states to have at least a 7% TUR trigger rate.
- Tier 4 will require states to have at least a 9% TUR trigger rate.

Because new unemployment rates will not be released by the Bureau of Labor Statistics before May 27, when Public Law 112–96 causes changes in the rates necessary to be ''on'' in certain Tiers of EUC, states can now know with certainty if they will have an ''off'' indicator in a Tier of EUC with the week ending June 2.

- States that will be below the rate necessary to remain on in Tier 2 under the new 6% trigger threshold are: IA, MN, NE., NH, ND, OK, SD, UT, VT, VA, and WY. These states will have an ''off'' indicator in EUC Tier 2 with the week ending June 2, 2012. The week ending June 23, 2012 will be the last week in which EUC claimants in those states could exhaust Tier 1 and establish eligibility in Tier 2. Under the phase-out provisions, claimants could receive any remaining entitlement they have in Tier 2 after June 23, 2012.
- States that will be below the rate necessary to remain on in Tier 3 under the new 7% trigger threshold are: DE, HI, KS, MD, MA, MT, WV, and WI. These states will have an ''off'' indicator in EUC Tier 3 with the week ending June 2, 2012. The week ending June 23, 2012 will be the last week in which EUC claimants in those states could exhaust Tier 2 and establish eligibility in Tier 3. Under the phase-out provisions, claimants could receive any remaining entitlement they have in Tier 3 after June 23, 2012.
- States that will be below the rate necessary to remain on in Tier 4 under the new 9% trigger threshold are: AZ, IL, KY, MI, and OR. These states will have an ''off'' indicator in EUC Tier 4 with the week ending June 2, 2012. The week ending June 23, 2012 will be the last week in which EUC claimants in those states could exhaust Tier 3 and establish eligibility in Tier 4. Under the phase-out provisions, claimants could receive any remaining entitlement they have in Tier 4 after June 23, 2012.

Information for Claimants

The duration of benefits payable in the EUC08 program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, 112–96, and the operating instructions issued to the states by the Department. The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the Department.

In the case of a state concluding an EB period, the State Workforce Agency will furnish a written notice of any change in potential entitlement to each individual who had established eligibility for EB (20 CFR 615.13 (c)(4)). Persons who believe they may be entitled to benefits under the EB or EUC08 programs, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 31st day of May, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–13836 Filed 6–6–12; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Education and Human Resources Project Monitoring Clearance

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by August 6, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm.

295, Arlington, VA 22030, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Education and Human Resources Project Monitoring Clearance.

OMB Approval Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The National Science Foundation (NSF) requests establishment of program accountability data collections that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (e.g., pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

The scope of this information collection request will primarily cover descriptive information gathered from education and training projects that are funded by NSF. NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), the NSF's Office of the Inspector General and as a basis for either internal or third-party evaluations of individual programs.

The collections will generally include three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post- NSF-funding-level impacts).

Use of the Information: This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2011- 2016 Strategic Plan may be found at: *http://www.nsf.gov/news/strategicplan/nsfstrategicplan_2011_2016.pdf.*

Since the this collection will primarily be used for accountability and evaluation purposes, including responding from queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's ET portfolio using some of the descriptive data gathered through this collection to conduct well-designed, rigorous research and portfolio evaluation studies.

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

Number of Respondents: 9,341.

Burden on the Public: NSF estimates that a total reporting and recordkeeping burden of 63,947 hours will result from activities to monitor EHR STEM education programs. The calculation is shown in Table 1.

TABLE 1—ANTICIPATED PROGRAMS THAT WILL COLLECT DATA ON PROJECT PROGRESS AND OUTCOMES ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER COLLECTION PER YEAR

Collection title	No of respondents	No of responses	Annual hour burden
Centers of Research Excellence in Science and Technology (CREST) and Historically Black Colleges and Universities Research Infrastructure for Science and Engineering (HBCU–RISE) Monitoring System.	37	37	1,374
Graduate STEM Fellows in K–12 Education (GK–12) Monitoring System	1,626	1,626	3,941
Integrative Graduate Education and Research Traineeship Program (IGERT) Monitoring System.	4,658	4,658	12,156
Informal Science Education (ISE) Monitoring System	157	157	2,047
Louis Stokes Alliances for Minority Participation (LSAMP) Monitoring System.	518	518	17,094
Louis Stokes Alliances for Minority Participation Bridge to the Doctorate (LSAMP–BD) Monitoring System.	50	50	3,600
Robert Noyce Teacher Scholarship Program (Noyce) Monitoring System	294	294	3,822
Research in Disabilities Education (RDE) Monitoring System	49	49	2,781
Scholarships in Science, Technology, Engineering, and Mathematics Program (S–STEM) Monitoring System.	500	1,000 (500 respondents × 2 responses/yr.)	6,000
Science, Technology, Engineering, and Mathematics Talent Expansion Program (STEP) Monitoring System.	242	242	6,292

TABLE 1—ANTICIPATED PROGRAMS THAT WILL COLLECT DATA ON PROJECT PROGRESS AND OUTCOMES ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER COLLECTION PER YEAR—Continued

Collection title	No of respondents	No of responses	Annual hour burden
Transforming Undergraduate Education in Science, Technology, Engineering, and Mathematics (TUES) Monitoring System.	1,210	1,210	4,840
Additional Collections not Specified	900	900	1,200
Total	10,241	10,741	65,147

The total estimate for this collection is 63,947 annual burden hours. The average annual reporting burden is between 1.5 and 72 hours per ''respondent,'' depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants.

Dated: June 4, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–13820 Filed 6–6–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing that it has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This ICR described completion of a Web-based form used to collect reports of certain resolution advisories (RAs), in accordance with 49 CFR 830.5(a)(10). This Notice informs the public that it may submit comments concerning the NTSB's proposed collection of information to the NTSB Desk Officer at the OMB.

DATES: Submit written comments regarding this proposed collection of information by July 9, 2012.

ADDRESSES: Respondents may submit written comments on the collection of information directly to the Desk Officer for National Transportation Safety Board, Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Scott Dunham, NTSB Office of Aviation Safety, at (202) 314–6387.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act, the NTSB previously published a Notice in the **Federal Register** indicating its proposal to collect the following information: (1) Confirmation that the incident to be reported falls under the scope of the rule; (2) contact information, such as the submitter's name, company (if any), email address, and telephone number; (3) information about the flight and aircraft, such as the call sign, type of aircraft, location and time of the occurrence, and altitude at which the aircraft experienced the RA; (4) information about the air traffic control (ATC) services being provided to the aircraft when the RA occurred, such as the ATC facility name and communications frequency in use; and (5) a brief description of the RA type and circumstances of the incident. 75 FR 15460 (March 29, 2010). Title 49 CFR 830.5(a)(10), which requires reports of certain RAs, does not require completion of the Web-based form; however, the NTSB has created the Web-based medium in order to provide respondents with the option of completing it, in lieu of placing phone calls or sending other written communications to the NTSB Office of Aviation Safety.

The NTSB did not receive any comments in response to the Notice of information collection. At this juncture, in accordance with OMB regulations that require this additional Notice for proposed ICRs, the NTSB seeks to notify the public that it may submit comments on this proposed ICR to OMB. 5 CFR 1320.10(a). Section 1320.10(a) requires this ''notice directing requests for information, including copies of the proposed collection of information and supporting documentation, to the [NTSB].'' Section 1320.10(a) also requires the NTSB request that comments be submitted to OMB, directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NTSB, within 30 days of this notice's publication. Pursuant to § 1320.10(a), the NTSB will provide a copy of this notice, together with the date of expected publication, to OMB. Under § 1320.10(b), within 60 days of the receipt of the aforementioned documents, OMB will notify the NTSB of its decision to approve or disapprove the collection of information described herein. Section 1320.10(b) also states OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision.

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the NTSB to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the NTSB to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The NTSB will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Respondents' completion of the proposed Web-based form is voluntary, as respondents who seek to report an incident under 49 CFR 830.5(a)(10) may do so by telephone or email. The Web-based form will be available on the NTSB Web site. The form is not duplicative of other agencies' collections of information. The NTSB estimates that respondents will spend approximately 10 minutes in completing the form. The NTSB estimates that approximately 120 respondents per year will complete the form.

Dated: May 31, 2012.

Deborah A.P. Hersman,

Chairman.

[FR Doc. 2012–13786 Filed 6–6–12; 8:45 am]

BILLING CODE 7533–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

General Aviation Safety Forum: Climbing to the Next Level

The National Transportation Safety Board (NTSB) will convene a 2-day forum focused on safety issues related to general aviation on June 19–20, 2012 in Washington, DC.

The event, ''General Aviation Safety: Climbing to the Next Level,'' will be chaired by NTSB Chairman Deborah A. P. Hersman and all five Board Members will participate.

''Each year, hundreds of people are killed in general aviation crashes, and thousands more are injured,'' said Chairman Hersman. ''Tragically, the circumstances leading to these accidents are often repeated over and over, year after year. If we are going to prevent future fatalities and injuries, these common causes must be addressed.''

Over the years, the NTSB has issued numerous safety recommendations addressing general aviation operations and last year, added General Aviation Safety to its revamped Most Wanted List of Transportation Safety Improvements.

Among the key safety issues the forum will address are pilot training and performance, pilot access to and use of weather-related information, and aircraft design, maintenance, and certification.

Panelists participating in the forum will represent industry, government, academia, and professional associations. At the conclusion of all presentations for each topic area, presenters will take part in a question and answer discussion with Board Members and NTSB staff. A detailed agenda and list of participants will be released closer to the date of the event.

Below is the preliminary forum agenda:

Tuesday, June 19

—Welcome and Opening Remarks
—Session One: Safety Priorities
—Session Two: Safety Programs
—Session Three: Role of the Flight Instructor
—Session Four: Content/Quality/Consistency of Pilot Training

Wednesday, June 20

—Session Five: Weather-Related Decision Making
—Session Six: New Aircraft Design and Certification
—Session Seven: Advanced Avionics and Handhelds
—Session Eight: Aircraft Maintenance and Modification
—Closing Remarks

A detailed agenda and list of participants will be released closer to the date of the event. The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza SW., Washington, DC. The forum is open to the public and free of charge. In addition, the forum can be viewed via webcast at *www.ntsb.gov*.

NTSB Media Contact: Keith Holloway, (202) 314–6100, *keith.holloway@ntsb.gov*.

NTSB Forum Manager: Jill Demko, 203–463–8320, *jill.demko@ntsb.gov*.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–13787 Filed 6–6–12; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0069]

Interim Staff Guidance JLD–ISG–2012–02; Compliance With Order EA–12–050, Order Modifying Licenses With Regard to Reliable Hardened Containment Vents

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Japan Lessons-Learned Project Directorate guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing the draft Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2012–02, ''Compliance with Order EA–12–050, Order Modifying Licenses with Regard to Reliable Hardened Containment Vents.'' This draft JLD–ISG provides guidance and clarification to assist nuclear power reactors applicants and licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions.

DATES: Comments must be filed no later than July 7, 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, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0069. You may submit comments by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0069. 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: Mr. Robert J. Fretz, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1980; email: *Robert.Fretz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0069 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–2012–0069.

• *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. The draft JLD–ISG–2012–02 is available under ADAMS Accession No. ML12146A371.

• *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.

• *NRC's Interim Staff Guidance Web Site:* JLD–ISG documents are also available online under the ''Japan

Lessons Learned'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

B. Submitting Comments

Please include Docket ID NRC–2012–0069 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. Background Information

The NRC staff developed draft JLD–ISG–2012–02 to provide guidance and clarification to assist nuclear power reactor applicants and licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions. These requirements are contained in Order EA–12–050, ''Order Modifying Licenses with Regard to Reliable Hardened Containment Vents'' (ADAMS Accession No. ML12054A696). The draft ISG is not a substitute for the requirements in Order EA–12–050, and compliance with the ISG is not a requirement. This ISG is being issued in draft form for public comment to involve the public in development of the implementing guidance.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height that inundated the Fukushima Dai-ichi nuclear power plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan. When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3, were in operation and Units 4, 5, and 6, were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel was offloaded to the Unit 4 spent fuel pool (SFP). Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators started at all six units providing alternating current (ac) electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal.

Following the events at the Fukushima Dai-ichi nuclear power plant, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC regulations and processes, and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011 (ADAMS Accession No. ML11186A950). These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY–11–0124, ''Recommended Actions to be Taken without Delay from the Near-Term Task Force Report,'' dated September 9, 2011 (ADAMS Accession No. ML11245A158) and SECY–11–0137, ''Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned,'' dated October 3, 2011 (ADAMS Accession No. ML11272A111).

As directed by the Commission's Staff Requirement Memorandum (SRM) for SECY–11–0093 (ADAMS Accession No. ML112310021), the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. SECY–11–0124 and SECY–11–0137 established the staff's prioritization of the recommendations based upon the potential for each recommendation to enhance safety.

After receiving the Commission's direction in SRM–SECY–11–0124 (ADAMS Accession No. ML112911571) and SRM–SECY–11–0137 (ADAMS Accession No. ML113490055), the NRC staff conducted public meetings to discuss the importance of reliable operation of hardened vents during conditions involving loss of containment heat removal capability which was already well established and this understanding has been reinforced by the clear lessons of Fukushima. Hardened vents have been in place in U.S. plants with boiling-water reactor (BWR) Mark I containments for many years but a wide variance exists with regard to the reliability of the vents. Additionally, hardened vents are not required on plants with BWR Mark II containments although as discussed above, Mark II containments are only slightly larger than Mark I. Therefore, reliable hardened venting systems in BWR facilities with Mark I and Mark II containments are needed to ensure that adequate protection of public health and safety is maintained.

In SRM–SECY–11–0137, the Commission directed the NRC staff to take certain actions and provided further guidance including directing the staff to consider filtered vents. The NRC staff plans to submit a Policy Paper to the Commission in July 2012.

On February 17, 2012, the NRC staff submitted SECY–12–0025, ''Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami'' (ADAMS Accession No. ML12039A103) to the Commission, including the order to implement requirements relating to reliable hardened venting systems at BWR facilities with Mark I and Mark II containment designs. As directed by SRM–SECY–12–0025 (ADAMS Accession No. ML120690347), the NRC staff issued Order EA–12–050, ''Order Modifying Licenses with Regard to Reliable Hardened Containment Vents.''

Proposed Action

By this action, the NRC is requesting public comments on draft JLD–ISG–2012–02. This draft JLD–ISG proposes guidance related to requirements contained in Order EA–12–050, Reliable Hardened Containment Vents. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 31st day of May 2012.

For the Nuclear Regulatory Commission.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–13806 Filed 6–6–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0068]

Interim Staff Guidance JLD–ISG–2012–01; Compliance With Order EA–12–049, Order Modifying Licenses With Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Japan Lessons-Learned Project Directorate guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing the draft Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2012–01, ''Compliance with Order EA–12–049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events.'' This draft JLD–ISG provides guidance and clarification to assist nuclear power reactors applicants and licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions.

DATES: Comments must be filed no later than July 7, 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, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0068. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0068. 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: Mr. Steven D. Bloom, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2431; email: *Steven.Bloom@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0068 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–2012–0068.
- *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. The draft JLD–ISG–2012–01 is available in ADAMS under Accession No. ML12146A014.
- *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.
- *NRC's Interim Staff Guidance Web Site:* JLD–ISG documents are also available online under the ''Japan Lessons Learned'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*

B. Submitting Comments

Please include Docket ID NRC–2012–0068 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.

SUPPLEMENTARY INFORMATION:

II. Background Information

The NRC staff developed draft JLD–ISG–2012–01 to provide guidance and clarification to assist nuclear power reactor applicants and licensees with the identification of measures needed to comply with requirements to mitigate challenges to key safety functions. These requirements are contained in Order EA–12–049, ''Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events,'' (ADAMS Accession No. ML12054A736). The draft ISG is not a substitute for the requirements in Order EA–12–049, and compliance with the ISG is not required. This ISG is being issued in draft form for public comment to involve the public in development of the implementation guidance.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height that inundated the Fukushima Dai-ichi nuclear power plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan andsignificantly affected the infrastructure and industry in the northeastern coastal areas of Japan. When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3, were in operation and Units 4, 5, and 6, were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel was offloaded to the Unit 4 spent fuel pool (SFP). Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators started at all six units providing alternating current (ac) electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal.

Following the events at the Fukushima Dai-ichi nuclear power

plant, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC regulations and processes, and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011 (ADAMS Accession No. ML11186A950). These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY–11–0124, ''Recommended Actions to be Taken without Delay from the Near-Term Task Force Report,'' dated September 9, 2011 (ADAMS Accession No. ML11245A158) and SECY–11–0137, ''Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned,'' dated October 3, 2011 (ADAMS Accession No. ML11272A111).

As directed by the Commission's staff requirement memorandum (SRM) for SECY–11–0093 (ADAMS Accession No. ML112310021), the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. SECY–11–0124 and SECY–11–0137 established the staff's prioritization of the recommendations based upon the potential for each recommendation to enhance safety.

After receiving the Commission's direction in SRM–SECY–11–0124 (ADAMS Accession No. ML112911571) and SRM–SECY–11–0137 (ADAMS Accession No. ML113490055), the NRC staff conducted public meetings to discuss enhanced mitigation strategies intended to maintain or restore core cooling, containment, and SFP cooling capabilities following beyond-design-basis external events. At these meetings, the industry described its proposal for a Diverse and Flexible Mitigation Capability (FLEX), as documented in the Nuclear Energy Institute's (NEI's) letter, dated December 16, 2011 (ADAMS Accession No. ML11353A008). FLEX is proposed as a strategy to fulfill the key safety functions of core cooling, containment integrity, and spent fuel cooling. Stakeholder input influenced the staff to pursue a more performance-based approach to improve the safety of operating power reactors than was originally envisioned in NTTF Recommendation 4.2, SECY–11–0124, and SECY–11–0137.

On February 17, 2012, the NRC staff provided SECY–12–0025, ''Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami'' (ADAMS Accession No. ML12039A103) to the Commission, including the proposed order to implement the enhanced mitigation strategies. As directed by SRM–SECY–12–0025 (ADAMS Accession No. ML120690347), the NRC staff issued Order EA–12–049, ''Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events'' (ADAMS Accession No. ML12073A195). On March 30, 2012, the Commission issued memorandum and Order CLI–12–09, ''In the Matter of South Carolina Electric & Gas Co. and South Carolina Public Service Authority (Also Referred to as Santee Cooper; Virgil C. Summer Nuclear Station, Units 2 and 3),'' (ADAMS Accession No. ML12090A531), which includes the requirements for mitigation strategies as a license condition for Virgil C. Summer Nuclear Station, Units 2 and 3.

Guidance and strategies required by the Order would be available if the loss of power, motive force and normal access to the ultimate heat sink to prevent fuel damage in the reactor, and SFP affected all units at a site simultaneously. The Order requires a three-phase approach for mitigating beyond-design-basis external events. The initial phase requires the use of installed equipment and resources to maintain or restore core cooling, containment, and SFP cooling. The transition phase requires providing sufficient, portable, onsite equipment and consumables to maintain or restore these functions until they can be accomplished with resources brought from off site. The final phase requires obtaining sufficient offsite resources to sustain those functions indefinitely.

On May 4, 2012, NEI submitted document 12–06, ''Diverse and Flexible Coping Strategies (FLEX) Implementation Guide,'' Revision B (ADAMS Accession No. ML12128A124), and on May 13, 2012, Revision B1 (ADAMS Accession No. ML12143A232), to provide specifications for an industry-developed methodology for the development, implementation, and maintenance of guidance and strategies in response to the mitigating strategies Order. The strategies and guidance described in NEI 12–06 expand on the strategies the industry developed and implemented to address the limited set of beyond-design-basis external events that involve the loss of a large area of the plant due to explosions and fire required pursuant to paragraph (hh)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.54, ''Conditions of licenses.''

Proposed Action

By this action, the NRC is requesting public comments on draft JLD–ISG–2012–01. This draft JLD–ISG proposes guidance related to requirements contained in Order EA–12–049, Mitigation Strategies for Beyond-Design-Basis External Events. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 31st day of May, 2012.

For the Nuclear Regulatory Commission.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–13810 Filed 6–6–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0067]

Interim Staff Guidance JLD–ISG–2012–03; Compliance with Order EA–12–051, Order Modifying Licenses With Regard to Reliable Spent Fuel Pool Instrumentation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Japan Lessons-Learned Project Directorate guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing the draft Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2012–03, ''Compliance With Order EA–12–051, Order Modifying Licenses With Regard to Reliable Spent Fuel Pool Instrumentation.'' This JLD–ISG provides guidance and clarification to assist nuclear power reactor applicants and licensees with the identification of measures needed to comply with requirements to install enhanced spent fuel pool monitoring capability.

DATES: Comments must be filed no later than July 7, 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, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0067. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0067. 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: Mrs. Lisa M. Regner, Japan Lessons Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1906; email: *Lisa.Regner@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0067 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–2012–0067.
- *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. The draft JLD–ISG–2012–03 is available in ADAMS under Accession No. ML12144A323.
- *NRC's Interim Staff Guidance Web Site:* JLD–ISG documents are also available online under the ''Japan Lessons Learned'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int.*
- *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.
- *Public Meeting:* Information on the draft ISG will be provided at a public meeting on June 21, 2012, from 9:00 a.m. to 11:00 a.m. in the Commissioner's Hearing Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 (ADAMS Accession No. ML12146A025).

B. Submitting Comments

Please include Docket ID NRC–2012–0067 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. Background Information

This draft interim staff guidance (ISG) is being issued to describe to the public methods acceptable to the NRC staff for complying with Order EA–12–051, ''Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (Effective Immediately)'' (Order EA–12–051), issued March 12, 2012 (ADAMS Accession No. ML12056A044). This draft ISG endorses, with exceptions, the methodologies described in the industry guidance document, Nuclear Energy Institute (NEI) 12–02, *Industry Guidance for Compliance with NRC Order EA–12–051, ''To Modify Licenses with Regard to Reliable Spent Fuel Pool Instrumentation''* (NEI 12–02), Revision B. The draft ISG is not a substitute for the requirements in Order EA–12–051, and compliance with the ISG not required. This ISG is being issued in draft form for public comment to involve the public in development of the implementation guidance.

The U.S. Nuclear Regulatory Commission (NRC) issued Order EA–12–051 following the NRC staff's evaluation of the earthquake and tsunami, and resulting nuclear accident, at the Fukushima Dai-ichi nuclear power plant in March 2011. Order EA–12–051 requires all licensees and construction permit (CP) holders to provide safety enhancements in the form of reliable spent fuel pool instrumentation for beyond-design-basis external events. Order EA–12–051 also requires the NRC staff to issue final interim staff guidance in August 2012 to provide additional details on an acceptable approach for complying with Order EA–12–051.

Following the events at the Fukushima Dai-ichi nuclear power plant, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF conducted a systematic and methodical review of the NRC regulations and processes, and determined if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi.

As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, Near-Term Report and Recommendations for Agency Actions Following the Events in Japan, dated July 19, 2011. These recommendations were modified by the NRC staff following interactions with stakeholders. Documentation of the NRC staff's efforts is contained in SECY–11–0124, Recommended Actions To Be Taken Without Delay From the Near Term Task Force Report, dated September 9, 2011, and SECY–11–0137, Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned, dated October 3, 2011. SECY–11–0124 and SECY–11–0137 established the NRC staff's prioritization of the recommendation based upon the potential for each recommendation to enhance safety.

As discussed in the Staff Requirements Memorandum associated with SECY–12–0025, Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami, dated March

9, 2012, the Commission determined that the additional requirements in Order EA–12–051 represent ''a substantial increase in the protection of public health and safety.'' Consequently, the Commission decided to administratively exempt this Order from applicable provisions of the Backfit Rule, Title 10 of the *Code of Federal Regulations* (10 CFR), 50.109, and the issue finality requirements in 10 CFR part 52.

As required by Order EA–12–051, the NRC staff is issuing a draft version of JLD–ISG–12–03 to provide additional details on an acceptable approach for complying with Order EA–12–051 requirements. The staff intends to issue the final ISG in August 2012 following consideration of public comments.

Numerous public meetings were held to receive stakeholder input on the proposed requirement for spent fuel pool instrumentation enhancements prior to issuance of Order EA–12–051. Following issuance of Order EA–12–051, several more public meetings were held with representatives from the NEI task force to discuss development of the guidance for compliance with Order EA–12–051. By letter dated May 11, 2012, the NEI task force submitted a guidance document for the implementation of Order EA–12–051 and requested the NRC endorsement.

Proposed Action

By this action, the NRC is requesting public comments on draft JLD–ISG–2012–03. This ISG proposes guidance related to requirements contained in Order EA–12–051, Reliable Spent Fuel Pool Instrumentation. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 31st day of May 2012.

For the Nuclear Regulatory Commission.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–13811 Filed 6–6–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08502; NRC–2012–0120]

License Amendment To Construct and Operate New In Situ Leach Uranium Recovery Facility; Uranium One Americas; Ludeman

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to request a hearing and to petition for leave to intervene, and Commission order.

DATES: Requests for a hearing or leave to intervene must be filed by August 6, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4, who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by June 18, 2012.

ADDRESSES: Please refer to Docket ID NRC–2012–0120 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0120. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

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. The Ludeman facility *In Situ* Leach Uranium Recovery Project License Amendment Request is available electronically under ADAMS Accession No. ML120120182. The license amendment request and additional supporting documents can be found in ADAMS under Accession Nos. ML120120182, ML120880043, ML120870451, and ML12128A244. Documents related to the application can be found in ADAMS under Docket No. 04008502.

- *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.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Senior Project Manager, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6607; email: *John.Buckley@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letter dated December 5, 2011, a request to amend Source Material License SUA–1341 to construct and operate a new *in situ* leach uranium recovery (ISL) facility at its Ludeman facility in Converse County, Wyoming.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML12131A322). Prior to approving the license amendment request, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an environmental review report. The environmental review report will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing and Petitions for Leave To Intervene

The NRC hereby provides note that this is a proceeding on an amendment to Source Material License SUA–1341 to construct and operate a new ISL uranium recovery facility at its Ludeman facility in Converse County, Wyoming. Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC's regulations are also accessible online in the NRC's Library at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in accordance with the filing instructions in Section III of this document. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the

petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions that support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one which, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The presiding officer will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian tribe, or designated representative thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 6, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). The petition must be filed in accordance with the filing instructions in Section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in the proceeding pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 6, 2012.

III. Electronic Submissions (E-Filing)

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in,

is available on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.htm.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of May, 2012.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28 ..	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53 ..	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60 ..	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2012–13809 Filed 6–6–12; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0176]

NRC Enforcement Policy Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing revisions to its Enforcement Policy (Enforcement Policy or Policy) to address construction-related topics, including enforcement discretion.

DATES: This revision of the NRC Enforcement Policy is effective on June 7, 2012.

ADDRESSES: Please refer to Docket ID NRC–2011–0176 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0176. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *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.

• *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.

FOR FURTHER INFORMATION CONTACT: Carolyn Fa´ría, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4050, email: *Carolyn.Faria-Ocasio@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a Staff Requirements Memorandum, SECY–09–0190, ''Staff Requirements—SECY–09–0190—Major Revision to NRC Enforcement Policy,'' dated August 27, 2010 (ADAMS Accession No. ML102390327), the Commission approved a revision to its Enforcement Policy. The NRC published a notice in the **Federal Register** on September 30, 2010 (75 FR 60485), announcing a revision to the Policy. The Commission also directed the NRC staff to reevaluate the portions of the Policy associated with construction activities (e.g., reactor or uranium enrichment plants), including under what conditions enforcement discretion could be applied to cases involving the holder of a limited work authorization (LWA) or combined license (COL). In a **Federal Register** notice (FRN) published on August 9, 2011 (76 FR 48919), the NRC solicited written comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor and materials licensees, vendors, and contractors) on construction-related topics that the NRC staff was evaluating for discussion in a Commission paper that would include recommended revisions to the NRC Enforcement Policy. On August 30, 2011, the NRC conducted a public meeting to discuss the proposed changes to the Policy. The meeting consisted of a detailed presentation of the changes as published in the FRN, and members of the public who attended the meeting received the opportunity to have an open discussion with the NRC staff.

In response to the FRN dated August 9, 2011 (76 FR 48919), and the public meeting on August 30, 2011, the staff received written comments on the proposed Policy revisions. Several stakeholders offered changes to the language in the Enforcement Policy to assist the NRC staff in clarifying the intent of the proposed revisions. The NRC also received comments from regulated industry stakeholders about the agency's policy on the use of enforcement discretion during construction. Based in part on the comments received from external stakeholders, the NRC staff has made changes to the Policy language where it deemed it appropriate to do so. A summary of the public comments on the proposed Policy and the NRC staff's responses to those comments is available in ADAMS under Accession No. ML11286A123.

Summary of Revisions to the Enforcement Policy

The following sections describe the changes to the Enforcement Policy. These sections also provide background information on those topics evaluated by the NRC staff.

1. Revision to Section 1.0, ''Introduction''

The phrase ''construct and'' was added to Item b to recognize that the NRC's regulatory authority includes applications for, and the actual construction of, facilities that will eventually operate under NRC regulations.

2. Revision to Section 1.2, ''Applicability''

The following two paragraphs were added to clarify that the Enforcement Policy applies to license holders, applicants, holders of construction authorizations, and certificate holders:

It is NRC policy to hold licensees, certificate holders, and applicants responsible for the acts of their employees, contractors, or vendors and their employees, and the NRC may cite the licensee, certificate holder, or applicant for violations committed by its employees, contractors, or vendors and their employees.

The NRC may use the term ''licensee'' in this Policy to generally refer not only to licensees, but also to certificate holders and applicants.

3. Revision to Section 2.2.1.a, ''Factors Affecting Assessment of Violations''

The phrase ''onsite or offsite chemical hazard exposures resulting from licensed or certified activities'' was added as the third criterion when evaluating actual consequences for uniformity. The inclusion of ''onsite and offsite chemical hazard exposures'' is consistent with the current Policy, including the examples provided in Section 6.2, ''Fuel Cycle Operations.'' The first example in Section 6.2 involves a high-consequence event, as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, ''Domestic Licensing of Special Nuclear Material.'' In particular, 10 CFR 70.61, ''Performance Requirements,'' defines ''high consequence'' to include, among other things, acute chemical exposure.

4. New Section 2.2.6, ''Construction''

New Section 2.2.6 was added as follows:

Section 2.2.6 Construction

In accordance with 10 CFR 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction

permit under 10 CFR Part 50, a combined license under 10 CFR Part 52, an early site permit authorizing the activities under 10 CFR 50.10(d), or a limited work authorization under 10 CFR 50.10(d). In an effort to preclude unnecessary regulatory burden, while maintaining safety, the Changes during Construction (CdC) Process, as developed in Interim Staff Guidance (ISG)–025, permits the licensee to proceed with the installation and testing of structures, systems or components different from the current licensing basis while the license amendment request (LAR) is under NRC review. Any activities undertaken under the CdC process are at the risk of the licensee, and the licensee is obligated to return to the current licensing basis (CLB) if the related LAR is subsequently not approved by the NRC. Failure to timely restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.

In accordance with 10 CFR 70.23(a)(7) and 10 CFR 40.32(e), commencement of construction before the NRC finishes its environmental review and issues a license for processing and fuel fabrication, conversion of uranium hexafluoride, or uranium enrichment facility construction and operation is grounds for denial to possess and use licensed material in the plant or facility. Additionally, in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant before the commencement of construction may also be grounds for denial of a license to possess and use special nuclear material.

This language addresses when and how the assessment of violations during construction occurs; it parallels the information provided for the assessment of violations for operating reactors.

5. Revisions to Section 2.3.2, ''Noncited Violation''

The words ''(for operating reactors)'' were added to the first sentence of the first paragraph to clarify the use of the Reactor Oversight Process. The last sentence of the first paragraph was modified to read: ''Typically, all of the criteria in either 2.3.2.a. or b. must be met for the disposition of a violation as an NCV.''

The following new second paragraph was added to be consistent with Enforcement Guidance Memorandum (EGM)–11–002, ''Enforcement Discretion for Licensee-Identified Violations at Power Reactor Construction Sites Pursuant to Title 10 of the *Code of Federal Regulations* Part 52,'' dated June 3, 2011 (ADAMS Accession No. ML11152A065):

For all SL IV violations identified by the NRC at fuel cycle facilities (under construction or in operation) in accordance with 10 CFR Part 70 or 10 CFR Part 40 and reactors under construction in accordance with 10 CFR Part 50 or 10 CFR Part 52, before the NRC determines that an adequate corrective action program has been implemented, the NRC normally issues a Notice of Violation. Until the determination that an adequate corrective action program has been implemented, NCVs may be issued for SL IV violations if the NRC has determined that the applicable criteria in 2.3.2.b. below are met. For reactor licensees, after the NRC determines that an adequate corrective action program has been implemented, the NRC will normally issue an NCV in lieu of an SL IV violation, whether that violation is identified by the licensee or the NRC.

The purpose of this EGM is to clarify the guidance for exercising enforcement discretion when the staff dispositions, as noncited violations (NCVs), Severity Level (SL) IV violations identified by licensees or applicants at power reactors that are under construction. The addition of this language also reflects current practices for dispositioning NCVs at fuel facilities (under construction or in operation).

6. Revisions to Section 2.3.2.a, ''Power Reactor Licensees''

The phrase ''restore compliance and'' was added to criterion 1 to more accurately reflect the NRC's expectations.

The current footnote, ''For reactor facilities under construction in accordance with 10 CFR Part 52, the corrective action program must have been demonstrated to be adequate,'' was deleted from criterion 1 to reflect the NRC's goal of promoting early identification of deficient conditions by licensees, even at the early stage when the licensees' corrective action programs have not been demonstrated to be adequate.

The phrase ''and violations associated with facility construction under 10 CFR Part 50, 'Domestic Licensing of Production and Utilization Facilities,' and 10 CFR Part 52, 'Licenses, Certifications, and Approvals for Nuclear Power Plants' '' was deleted from criterion 3 to reflect the NRC's expectation of crediting corrective action programs at power reactors to address both immediate corrective actions and any actions to preclude recurrence.

7. Revisions to Section 3.8, ''Notices of Enforcement Discretion for Operating Power Reactors and Gaseous Diffusion Plants''

The following footnote was added to clarify that the notice of enforcement discretion (NOED) process is not applicable while reactor facilities are under construction:

NOEDs will not be used at reactors during construction before the Commission's 10 CFR 52.103(g) or 10 CFR 50.57 finding, as applicable. However, the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions or otherwise refrain from taking enforcement action within the Commission's statutory authority, as identified in Section 3.0 of this Enforcement Policy.

The NRC has not identified any plausible scenarios where risk to public health and safety (or security) would be exacerbated by the failure of the NRC to grant such a licensee, or permit holder, an NOED.

8. New Section 3.9, ''Violations Involving Certain Construction Issues''

A new section was added to incorporate new construction activities with traditional enforcement discretion. The new section also acknowledges that the NRC staff is developing a CdC process that will work in conjunction with the license amendment review process for COL holders only. The new process is intended to permit combined licensees (i.e. COL Holders) to proceed at risk with certain construction activities that differ from the licensing basis while the NRC is evaluating the related license amendment request.

3.9 Violations Involving Certain Construction Issues

a. Fuel Cycle Facilities

The NRC may choose to exercise discretion for fuel cycle facilities under construction (construction is defined in 10 CFR 40.4 for source material licensees and in 10 CFR 70.4 for special nuclear material licensees) based on the general enforcement discretion guidance contained in Section 3 of this Enforcement Policy.

b. Part 50 Construction Permit and LWA Holders

The NRC may exercise discretion for Construction Permit and LWA holders during construction using the general enforcement discretion guidance in Section 3 of the Enforcement Policy.

c. COL Holders (Reactor Facilities)

The NRC may exercise discretion for COL holders during construction using the general enforcement discretion guidance in Section 3 of the Enforcement Policy, as applicable. Additionally, the NRC may reduce or refrain from issuing an NOV/NCV for a violation associated with an unplanned change that deviates from the licensing basis that is implemented during construction and that would otherwise require prior NRC approval (in the form of a license amendment) when all of the following criteria are met:

- The licensee identifies the unplanned change implemented, which the staff would normally disposition as a Severity Level IV violation of NRC requirements.
- The licensee submits the necessary information without delay to the NRC so that

it can conduct a timely evaluation of the change as part of the license amendment review process, or submits information to the NRC stating that it will restore the current licensing basis (CLB).

• Either (1) the cause of the deviation was not within the licensee's control, such that the change was not avoidable by reasonable licensee quality assurance measures or management controls, or (2) the licensee placed the cause of the unplanned change in its corrective action program to ensure comprehensive corrective actions to address the cause of the change to preclude recurrence.

For similar issues not identified by the licensee, the NRC may refrain from issuing an NOV/NCV on a case-by-case basis depending upon the circumstances of the issue, such as whether the requirements were clearly understood or should have been understood at the time, the cause of the issue, and why the licensee did not identify the issue.

When the NRC determines that an unplanned change during construction associated with a violation of requirements meets the criteria outlined above and the licensee without delay submits the necessary information for NRC evaluation, the licensee's continued failure to meet the current licensing basis will not be treated as a willful or continuing violation only while the licensee prepares the license amendment request and the NRC reviews the submittal. (Note: If the NRC subsequently denies a requested license amendment change, or if the NRC requires additional measures to be taken for the change to be considered acceptable, then a separate NOV or order may be issued to ensure appropriate corrective actions are taken, including restoring the configuration to the CLB).

The following two footnotes relating to the new Section 3.9 were added:

The NRC may issue an enforcement action, including consideration of willfulness, for the cause of these unplanned changes, such as a failure to implement appropriate work controls or quality control measures, or a failure to adhere to procedures, processes, instructions, or standards that implement NRC requirements. This enforcement may be appropriate for the actions that led to the CdC issue.

and

NRC-identified violations that result in a ''use as built'' determination or that result in an unplanned change (or both) will normally be dispositioned as a cited, noncited, or minor violation, whether or not the unplanned change issue is resolved by a subsequently approved license amendment.

9. Revisions to Section 6.0, ''Violation Examples''

The following second paragraph was added to the introduction of the section:

Many examples are written to reflect the risks associated with the use of nuclear materials. However, violations during construction generally occur before the nuclear material and its associated risk are present. Therefore, the NRC will consider the lower risk significance of violations that occur during construction in the areas of emergency preparedness, reactor operator licensing, and security and may reduce the severity level for those violations from that indicated by the examples in those areas. In order to maintain consistent application, the staff must coordinate with the Office of Enforcement before applying this lower risk significance concept for violations that occur during construction.

The NRC staff recognizes that, although certain requirements (i.e., those for emergency preparedness, reactor operator licensing, and security) apply generally during construction activities, flexibility is needed to factor in the lower risk associated with certain violations that occur during construction.

10. Revisions to Section 7.0, ''Glossary''

The glossary definition of ''licensee'' was revised to reflect the addition of language to Section 1.2, ''Applicability:''

''Licensee'' means a person or entity authorized to conduct activities under a license issued by the Commission. However, in most cases in the Policy, the term is applied broadly to refer to any or all of entities listed in Section 1.2, ''Applicability.''

Procedural Requirements

Paperwork Reduction Act Statement

This policy statement contains and references new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting documents displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Dated at Rockville, Maryland, this 1st day of June, 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2012–13808 Filed 6–6–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. N2012–2; Order No. 1361]

Proposed Post Office Structure Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request for an advisory opinion regarding its Post Office Structure Plan. This document invites public comments on the request and addresses several related procedural steps.

DATES:

Notices of intervention are due: June 18, 2012, 4:30 p.m. Eastern Time.

Hearing on the Postal Service's direct case: July 11, 2012, at 9:30 a.m. (Commission hearing room, 901 New York Ave. NW 20268–0001, Suite 200).

ADDRESSES: Submit notices of intervention electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On May 25, 2012, the Postal Service filed a request with the Commission for an advisory opinion under 39 U.S.C. 3661 regarding its Post Office Structure Plan (POStPlan) under which it intends to examine and consider changes to operating methods and conditions, including hours of operation used to provide retail and other services and products at approximately 17,700 of the more than 32,000 postal retail locations.[1]

The Postal Service states that under the POStPlan there is a ''possibility that the scope of the changes in service * * * could be 'substantially nationwide,' within the meaning of 39 U.S.C. 3661(b).'' *Id.* at 2. The Postal Service states that if it determines that retail operations at facilities should be discontinued, postal patrons would

[1] United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, May 25, 2012, at 1 (Request).

have to obtain services at a different postal facility or through alternate access channels. *Id.*

The Postal Service has identified the POStPlan as having the potential to change service nationwide and has asked for a Commission advisory opinion. Under these circumstances, the Commission shall provide an opportunity for a hearing on the record and provide a written opinion on the POStPlan. 39 U.S.C. 3661(c).

Request. The Request is accompanied by testimony from one witness, Jeffrey C. Day (USPS–T–1), and five library references.[2]

Witness Day, Manager, Retail Operations, in the Office of Delivery and Post Office Operations at Postal Service Headquarters states that he has primary responsibility for developing policies and procedures relating to the day-to-day operations of post offices, opening or closing of retail facilities, and improving the customer experience. USPS–T–1 at i.

In his testimony, witness Day describes the current state of the Postal Service's retail network and recent trends in customer behavior. *Id.* at 2–5. He then compares the retail access and services offered by the Postal Service with actual retail activity. *Id.* at 5–9. The testimony describes the POStPlan as a Headquarters-initiated review of all EAS Level 16 or below post offices by examining workload. *Id.* at 11. Witness Day explains that approximately 17,700 post offices will be examined under the POStPlan.[3] *Id.* Those post offices with an Adjusted Earned Workload (AEWL) for FY 2011 greater than 5.74 hours will be categorized as EAS Level 18 or above. *Id.* at 12. Those post offices with an AEWL of 5.74 hours or fewer will be categorized as either Remotely Managed Post Offices (RMPOs) or Part-Time Post Offices (PTPOs). *Id.* at 11.

Witness Day states that RMPOs will be subject to realigned weekday window service of 2, 4, or 6 hours per weekday, depending upon workload. *Id.* at 12–13. He explains that RMPOs realigned with 6 window service hours will be staffed by a career employee, and RMPOs realigned with 2 or 4 window service hours will be staffed by a non-career employee. He notes that RMPOs will report to and be managed by a postmaster located at a designated Administrative Post Office (APO). *Id.* at 13.

Witness Day states that those post offices that would otherwise qualify as RMPOs will be classified as PTPOs if (1) the post office is 25 or more driving miles from the nearest post office, or (2) the post office is outside a 25-mile radius of the nearest APO. He explains that PTPOs will be staffed by a career employee for 6 hours of window service each weekday, regardless of workload, and will report to a district office rather than an APO. *Id.* at 13–14.

Witness Day also states that the Postal Service generally will not study for discontinuance post offices that are part of the POStPlan ''unless the community has a strong preference for discontinuance * * *.'' *Id.* at 15. For post offices currently being studied for discontinuance, the Postal Service will hold the discontinuance process in abeyance pending a determination of whether to realign retail window hours. *Id.* at 18. When the community expresses a strong preference for one of the alternative access means other than realigned window service hours under the POStPlan, the Postal Service will proceed with a discontinuance study utilizing the procedures set forth in ''USPS Handbook PO–101.'' [4]

Witness Day states that, beginning in September 2012, the Postal Service will survey customers to solicit their preferences for realigned window service hours or a discontinuance study. *Id.* at 17, 21. The Postal Service will then review the surveys and hold a community meeting to discuss the survey results. If the Postal Service determines to maintain the post office with realigned retail hours, it will consider feedback from the community meeting to determine the time of day in which retail window service will be available and the timeline for implementation. If the post office is not continued with realigned window service hours, the Postal Service will likely study the facility for discontinuance. *Id.* at 17–18.

The Request and all supporting public materials are on file in the Commission's docket room for inspection during regular business hours, and are available on the Commission's Web site at *http://www.prc.gov.*

Timing. The Postal Service believes that its filing satisfies the requirements of 39 CFR 3001.72, which states that a request for an advisory opinion must be filed at least 90 days in advance of the effective date of the proposed changes. *See* Request at 10. Although witness Day indicates that the Postal Service will begin upgrading post offices identified as APOs and those with an AEWL of greater than 5.74 hours per day to EAS Level 18 post offices in June 2012, he also states that ''no reduction in hours or discontinuance study pursuant to POStPlan will occur until more than 90 days after the filing of the request for an advisory opinion with the PRC.'' USPS–T–1 at 21.

Further procedures. 39 U.S.C. 3661(c) requires that the Commission afford an opportunity for a formal, on-the-record hearing of the Postal Service's Request under the terms specified in sections 556 and 557 of title 5 of the United States Code before issuing its advisory opinion. Based on its preliminary review of the Request, the Commission finds it appropriate to expedite the proceeding. To facilitate expeditious review of the matter, the Commission expects parties to make judicious use of discovery, discovery objections, and motions' practice. Every effort should be made to confer to resolve disputes informally.

All interested persons are hereby notified that notices of intervention in this proceeding shall be due on or before June 18, 2012. *See* 39 CFR 3001.20 and 3001.20a. Consistent with rule 20, each person filing a notice of intervention shall, *inter alia,* specify the nature of his/her interest and whether or not he/she requests a hearing. *See* 39 CFR 3001.20. Discovery may be propounded upon filing a notice of intervention. Responses to discovery shall be due within 7 days.

The procedural schedule shown below the signature of this order will be followed in this proceeding assuming that no participant desires to present rebuttal testimony. Participants who wish to present rebuttal testimony must notify the Commission of their intent to file, and the nature of their rebuttal, by July 11, 2012. Rebuttal testimony, if requested, will be due July 18, 2012. The balance of the procedural schedule will be revised accordingly.

Public Representative. Section 3661(c) of title 39 requires the participation of an ''officer of the Commission who shall be required to represent the interests of the general public.'' Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated to serve as the Public Representative to represent the interests of the general public in this proceeding.

[2] *See* Notice of United States Postal Service of Filing of Initial Library References, May 25, 2012, identifying and describing the library references filed in support of the Postal Service's direct case.

[3] The post offices examined under the POStPlan include all 17,728 EAS Level 16 or below post offices that were operational as of the end of FY2011. Witness Day explains that this number includes post offices that have been suspended or become non-operational since the close of FY2011, but that those post offices will not be part of the POStPlan. USPS–T–1 at 1 n.1.

[4] *Id.* at 22–23; *see* 39 CFR part 241. Witness Day notes that the discontinuance process has been improved so that it now uses actual employee costs based on historical data, includes detailed financial information such as one-time costs not previously accounted for, and captures more non-revenue transactions. USPS–T–1 at 23–24.

Neither the Public Representative nor any additional persons assigned to assist the Public Representative shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity.

It is ordered:

1. The Commission establishes Docket No. N2012–2 to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The procedural schedule for this proceeding is set forth below the signature of this order.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Emmett Rand Costich to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

June 18, 2012	Notices of intervention.
June 28, 2012	Close of discovery on Postal Service direct case.
July 2, 2012	Notice of intent to conduct oral cross-examination.
July 11, 2012	Hearing on the Postal Service's direct case (if requested) (9:30 a.m. in the Commission's hearing room).
July 11, 2012	Notice of intent to file rebuttal testimony.
July 18, 2012	Rebuttal testimony (if requested).
July 20, 2012	Filing of briefs (if no rebuttal testimony).
July 27, 2012	Filing of reply briefs (if no rebuttal testimony).

[FR Doc. 2012–13775 Filed 6–6–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30092; File No. 812–14001]

Hennion & Walsh, Inc. and Smart Trust; Notice of Application

May 31, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B) and (C) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain series of a unit investment trust (''UIT'') registered under the Act to acquire shares of registered management investment companies and unit investment trusts or series thereof (the ''Funds'') both within and outside the same group of investment companies.

APPLICANTS: Hennion &Walsh, Inc. (the ''Depositor'') and Smart Trust (the ''Trust'').

DATES: *Filing Date:* The application was filed on January 25, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 25, 2012 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 2001 Route 46, Waterview Plaza, Parsippany, NJ 07054.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Mary Kay Frech, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a UIT registered under the Act.[1] Each Series will be a series of a Trust and will offer units for sale to the public (''Units''). Each Series will be created pursuant to a trust agreement which will incorporate by reference a master trust agreement among the Depositor, Hennion & Walsh Asset Management, Inc, as supervisor, and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The Depositor is a broker dealer registered under the Securities Exchange Act of 1934 and member of the Financial Industry Regulatory Authority, Inc. (''FINRA'').

2. Applicants request relief to permit a Series to invest in registered investment companies or series thereof (''Funds'') that are (a) part of the same ''group of investment companies'' (as that term is defined in section 12(d)(1)(G) of the Act) as the Series (''Affiliated Funds''), and (b) not part of the same group of investment companies as the Series (''Unaffiliated Funds''). Each of the Funds will be registered as a closed-end management investment company (''Closed-end Fund''), an open-end management investment company (''Open-end Fund'') or a UIT. An Unaffiliated Fund that is a UIT is referred to as an ''Unaffiliated Underlying Trust.'' An Unaffiliated Fund that is a Closed-end Fund or Open-end Fund is referred to as an ''Unaffiliated Underlying Fund.'' Certain of the Funds may be registered as Open-end Funds or UITs, but have received exemptive relief in order that their shares may be traded at

[1] Applicants request that the order also extend to future registered UITs sponsored by the Depositor or an entity controlling, controlled by or under common control with the Depositor and their respective series (the future UITs, together with the Trust, are collectively the ''Trusts'' and the series of the Trusts are the ''Series''). All existing entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

''negotiated prices'' on a national securities exchange in the same manner as other equity securities (the ''Exchange-traded Funds''). Shares of Exchange-traded Funds and Closed-end Funds will be deposited in a Series at prices which are based on the market value of the securities, as determined by an evaluator. The Depositor does not have discretion as to when portfolio securities of a Series will be sold, except that the Depositor is authorized to sell securities in extremely limited circumstances described in the Series' prospectus.

3. Applicants state that the requested relief will provide investors with a practical, cost-efficient means of investing in a professionally selected, diversified portfolio of securities of investment companies. Each Series may also make investments in securities that are not issued by registered investment companies.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the value of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer (''Broker'') from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met, including that the only other investments held by the acquiring company are government securities and short-term paper. Applicants state that they may not rely on section 12(d)(1)(G) because a Series will invest in Unaffiliated Funds and securities other than government securities and short-term paper in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Series to purchase or otherwise acquire shares of the Funds in excess of the percentage limitations of sections 12(d)(1)(A) and (C), and the Open-end Funds, their principal underwriters and any Broker to sell their shares to the Series in excess of the percentage limitations of section 12(d)(1)(B).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the concern about undue control does not arise with respect to a Series' investment in Affiliated Funds, as reflected in section 12(d)(1)(G) of the Act. Applicants also state that the proposed arrangement will not result in undue influence by a Series or its affiliates over Unaffiliated Funds. Applicants have agreed that (a) The Depositor, (b) any person controlling, controlled by or under common control with the Depositor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, sponsored or advised by the Depositor (or any person controlling, controlled by or under common control with the Depositor) (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning section 2(a)(9) of the Act. Applicants also note that conditions 2, 3, 5 and 6 set forth below will address the concern about undue influence with respect to the Unaffiliated Funds.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in the Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees to the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Underlying Fund, including a Closed-end Fund or an Exchange-traded Fund, may choose to reject an investment from the Series by declining to execute the Participation Agreement.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that any sales charges and/or service fees, as those terms are defined in Rule 2830 of the Conduct Rules of the NASD, Inc. (''NASD Conduct Rules''),[2] charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.[3] In addition, the Trustee or Depositor will waive fees otherwise payable to it by a Series in an amount at least equal to any compensation (including fees paid pursuant to any plan adopted by an Unaffiliated Underlying Fund under rule 12b-1 under the Act) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by the Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash

[2] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to Conduct Rule 2830 that may be adopted by FINRA.

[3] With respect to purchasing Closed-end Funds or Exchange-traded Fund shares, a Series may incur the customary brokerage commissions associated with purchasing any equity security on the secondary market.

management purposes. Applicants also represent that a Series' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), acting as principal, from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and an Affiliated Fund might be deemed to be under the common control of the Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become ''affiliated persons'' if the Series acquires more than 5% of the Fund's outstanding voting securities. The sale or redemption by a Fund of its shares to or from a Series therefore could be deemed to be a principal transaction prohibited by Section 17(a) of the Act.[4]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Open-end Funds and Funds that are UITs will be based on the net asset values of the Funds. Finally, applicants state that the proposed transactions will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. No Series or its Depositor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities (each, a ''Series Affiliate'') will cause any existing or potential investment by the Series in an Unaffiliated Fund to influence the terms of any services or transactions between the Series or Series Affiliate and the Unaffiliated Fund or its investment adviser(s), sponsor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Unaffiliated Underlying Fund, including a majority of the disinterested board members, will determine that any consideration paid by the Unaffiliated Underlying Fund to the Series or Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

4. The Trustee or Depositor will waive fees otherwise payable to it by the Series, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund under rule 12b-1 under the Act) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by a Series in the Unaffiliated Fund.

5. No Series or Series Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. The board of an Unaffiliated Underlying Fund, including a majority of the disinterested board members, will

[4] To the extent purchases and sales of shares of an Exchange-traded Fund occur in the secondary market (and not through principal transactions directly between a Series and an Exchange-traded Fund), relief from section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between Exchange-traded Funds and a Series. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an Exchange-traded Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Series because the investment adviser to the Exchange-traded Fund or an entity controlling, controlled by or under common control with the investment adviser is also a depositor to the Series. In addition, the request for relief does not cover principal transactions with Closed-end Funds.

adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in the Unaffiliated Underlying Fund. The board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of the Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. An Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the board of the Unaffiliated Underlying Fund were made.

8. Before investing in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), each Series and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that the Depositor and Trustee, and the board of directors or trustees of the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment, and for a period not less than six years thereafter, the first two years in an easily accessible place.

9. Any sales charges and/or service fees charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13769 Filed 6–6–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold its inaugural meeting on Tuesday, June 12, 2012, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 10:00 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

On May 14, 2012, the Commission issued notice of the Committee meeting (Release No. 33–9322), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes introduction of the Committee members, remarks by the Chairman and Commissioners, discussion and approval of bylaws and charter, discussion of subcommittees, and election of officers.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 1, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13965 Filed 6–5–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Optimized Transportation Management, Inc.; Order of Suspension of Trading

June 5, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Optimized Transportation Management, Inc. (''Optimized Transportation Management'') because it has not filed a periodic report since it filed its Form 10–Q for the period ending September 30, 2010, filed on November 22, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Optimized Transportation Management. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934,

that trading in the securities of Optimized Transportation Management is suspended for the period from 9:30 a.m. EDT on June 5, 2012, through 11:59 p.m. EDT on June 18, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–13933 Filed 6–5–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Future Now Group, Inc., and Gammacan International, Inc.; Order of Suspension of Trading

June 5, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Future Now Group, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gammacan International, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 5, 2012, through 11:59 p.m. EDT on June 18, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–13931 Filed 6–5–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

True Product ID, Inc.; Order of Suspension of Trading

June 5, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of True Product ID, Inc. (''True Product'') because it has not filed a periodic report since it filed its Form 10–Q for the period ending March 31, 2009, filed on May 20, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of True Product. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of True Product is suspended for the period from 9:30 a.m. EDT on June 5, 2012, through 11:59 p.m. EDT on June 18, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–13932 Filed 6–5–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67097; File No. SR–ISE–2012–26]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

June 1, 2012.

On April 9, 2012, the International Securities Exchange, LLC (''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade option contracts overlying 10 shares of a security. The proposed rule change was published for comment in the **Federal Register** on April 24, 2012.[3] The Commission received four comment letters on the proposal.[4]

Section 19(b)(2) of the Act [5] 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 June 8, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comment letters received, and any response to the comment letters submitted by ISE.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates July 23, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ISE–2012–26).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13768 Filed 6–6–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67095; File No. SR–OCC–2012–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Amendments to Certain Rules Applicable to Stock Futures

June 1, 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 May 24, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66827 (April 18, 2012), 77 FR 24547.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, Managing Director Order Routing & Market Data Strategy, TD Ameritrade, Inc., dated April 30, 2012; Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated April 30, 2012; Manisha Kimmel, Executive Director, Financial Information Forum, dated April 30, 2012; and Joan Conley, Senior Vice President & Corporate Secretary, The NASDAQ OMX Group, Inc., dated April 30, 2012.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Several separate purposes underlie the proposed rule change. First, the rule change clarifies the applicability of OCC's rules to stock futures overlying index-linked securities. Second, it eliminates a *de minimis* exception relating to adjustments to stock futures overlying ETFs. Third, it makes a technical change to the rules that permit the acceleration of the maturity (expiration) date of stock futures (stock options) following an adjustment in response to cash-out events.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The first purpose of this proposed rule change is to clarify the applicability of OCC's By-Laws and Rules to security futures on index-linked securities such as exchange-traded notes, which are currently traded on OneChicago, LLC. Index-linked securities are non-convertible debt of a major financial institution that typically have a term of at least one year but not greater than thirty years and that provide for payment at maturity based upon the performance of an index or indexes of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing. Index-linked securities are traded on national securities exchanges and, although they are technically debt securities, meet the definition of ''NMS stock'' under Regulation NMS.[4] Furthermore, index-linked securities traded on designated contract markets meet the requirements of Commodity Futures Trading Commission Regulation 41.21 for the underlying securities of security futures products that are eligible to be treated as a single security. OneChicago therefore treats security futures on index-linked securities as security futures on single securities, or ''single stock futures,'' for listing and trading purposes, and trading in them will generally be governed by the same rules that are applicable to other single stock futures. OCC similarly treats futures on index-linked securities as single stock futures, and accordingly is proposing to amend the definition of ''stock future'' in Article I of its By-Laws to explicitly include index-linked securities.[5]

In addition to amending the definition of ''stock future'' to reference index-linked securities, OCC is proposing to amend Interpretation and Policy .05 to Article XII, Section 3 of its By-Laws to clarify that a call of an entire class of index-linked securities will result in an adjustment of security futures on index-linked securities similar to the adjustment that would be made to other stock futures in the event of a cash merger, but that a partial call will not result in an adjustment. OCC is also proposing to add Interpretation and Policy .11 to Article XII, Section 3 of its By-Laws to establish that interest payments on index-linked securities will generally be considered ''ordinary cash dividends or distributions'' within the meaning of paragraph (c) of Section 3. The proposed amendments parallel amendments previously made to Article VI, Section 11A of the By-Laws to accommodate options on index-linked securities.[6]

The second purpose of this proposed rule change is to amend Interpretation and Policy .08 to Article XII, Section 3, which provides that OCC will ordinarily adjust for capital gains distributions on underlying ''fund shares,'' *i.e.,* shares of exchange-traded funds (''ETFs'') but with a *de minimis* exception under which no adjustment will be made in respect of distributions of less than $.125 per fund share. (An equivalent *de minimis* provision is contained in the Interpretations and Policies to Article VI, Section 11A, governing stock options.) However, in the case of stock futures, OneChicago, the only futures exchange clearing through OCC that currently trades such futures, has requested that adjustments be made for capital gains distributions in respect of fund shares without exception in order to permit the stock futures on ETFs to more closely reflect the economic characteristics of the ETFs' underlying stocks. This revision to the provision for fund shares futures will establish consistency with Interpretation and Policy .01(b) to Article XII, Section 3 which also does not contain a *de minimis* threshold for stock futures adjusted for cash distributions. Accordingly, OCC is proposing to amend Interpretation and Policy .08 to eliminate the *de minimis* exception.

Additionally, OCC proposes to make a technical correction to Rule 1304, which permits the acceleration of the maturity date for stock futures adjusted to require the delivery of cash, and Rule 807, which permits the acceleration of the expiration date of stock options adjusted to require the delivery of cash. Rules 1304 and 807 contain language that could be read to suggest that such acceleration would occur only in the event of a cash-out merger. However, cash-outs also may occur as a result of bankruptcies, ADS liquidations and other events, and there is no reason to limit such accelerations to cash-out merger events. Accordingly, OCC proposes to amend Rules 1304 and 807 to delete language that may be perceived to limit OCC's ability to accelerate a maturity or expiration date to such events. OCC is also proposing to delete as obsolete a version of Rule 807 that was effective before January 1, 2008, and related language regarding the effective date in what would now be the only version of Rule 807.

OCC believes that the proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to OCC because they will promote the prompt and accurate clearance and settlement of securities transactions by clarifying that security futures on index-linked securities will be cleared and settled subject to the same rules and procedures that are used successfully by OCC to clear and settle stock futures, eliminating an unnecessary *de minimis* threshold for adjusting stock futures on

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] ''NMS stock'' is defined in Rule 600(b)(47) of Regulation NMS to mean ''any NMS security other than an option.'' ''NMS security'' is defined in Rule 600(b)(46) to mean any security for which transaction reports are collected and disseminated under an effective national market system plan, and because index-linked securities are exchange traded they fall within this definition.

[5] Article I of OCC's By-Laws defines ''index-linked security'' to mean ''a debt security listed on a national securities exchange, the payment upon maturity of which is based in whole or in part upon the performance of an index or indexes of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing.''

[6] Securities Exchange Act Release No. 34–60872 (October 23, 2009), 74 FR 55878 (October 29, 2009).

[7] 15 U.S.C. 78q–1.

ETFs, and clarifying OCC's ability to accelerate maturity dates of stock futures or expiration dates of stock options in events other than cash-out merger events and eliminating obsolete rules or references. The proposed rule change is not inconsistent with any rules of OCC, including any that are proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2012–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2012–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_08.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–08 and should be submitted on or before June 28, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13767 Filed 6–6–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67094; File No. SR–Phlx–2012–76]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend its FLEX No Minimum Value Pilot Program

June 1, 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 May 30, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for FLEX index options and FLEX equity options (together known as ''FLEX Options'').[4]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] In addition to FLEX Options, FLEX currency options are also traded on the Exchange. These flexible index, equity, and currency options provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices; and may have expiration dates within five years. *See* Rule 1079. FLEX currency options traded on the Exchange are also known as FLEX World Currency Options (''WCO'') or Foreign Currency Options (''FCO''). The pilot program discussed herein does not encompass FLEX currency options.

[5] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for FLEX Options (the ''Pilot Program'' or ''Pilot'').

Rule 1079 deals with the process of listing and trading FLEX equity, index, and currency options on the Exchange. Rule 1079(a)(8)(A) currently sets the minimum opening transaction value size in the case of a FLEX Option in a newly established (opening) series if there is no open interest in the particular series when a Request-for-Quote (''RFQ'') is submitted (except as provided in Commentary .01 to Rule 1079): (i) $10 million underlying equivalent value, respecting FLEX market index options, and $5 million underlying equivalent value respecting FLEX industry index options; [6] (ii) the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities, with respect to FLEX equity options (together the ''minimum value size'').[7]

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending May 31, 2012, there shall be no minimum value size requirements for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) above.[8]

The Exchange now proposes to extend the Pilot Program for a period ending March 29, 2013.[9]

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant an extension. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Extension of the Pilot Program would continue to provide greater opportunities for traders and investors to manage risk through the use of FLEX Options, including investors that may otherwise trade in the unregulated over the counter (''OTC'') market where similar size restrictions do not apply.[10]

In support of the proposed extension of the Pilot Program, the Exchange has under separate cover submitted to the Commission a Pilot Program Report (''Report'') that provides an analysis of the Pilot Program covering the period during which the Pilot has been in effect. This Report includes: (i) Data and analysis on the open interest and trading volume in (a) FLEX equity options that have an opening transaction with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX index options that have an opening transaction with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis of the types of investors that initiated opening FLEX Options transactions (*i.e.,* institutional, high net worth, or retail). The Report has been submitted to the Commission on a confidential basis.

If, in the future, the Exchange proposes an additional extension of the Pilot Program, or should the Exchange propose to make the Pilot Program permanent, the Exchange will submit a Report covering the period June 1, 2012, through November 30, 2012, and including the details referenced in the prior paragraph. The Exchange will also provide the nominal dollar value of each trade. The Report would be submitted to the Commission on or before January 5, 2013, unless the Commission agrees otherwise, and would be provided on a confidential basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the Pilot Program, which eliminates the minimum value size applicable to FLEX Options, would provide greater opportunities for investors to manage risk through the use of FLEX Options. The Exchange notes that it has not experienced any adverse market effects with respect to the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day

[6] Market index options and industry index options are broad-based index options and narrow-based index options, respectively. *See* Rule 1000A(b)(11) and (12).

[7] Subsection (a)(8)(A) also provides a third alternative: (iii) 50 contracts in the case of FLEX currency options. However, this alternative is not part of the Pilot Program.

[8] *See* Securities Exchange Act Release No. 66711 (April 2, 2012), 77 FR 20867 (April 6, 2012) (SR–Phlx–2012–44) (notice of filing and immediate effectiveness of proposal to extend Pilot Program). The Pilot Program was instituted in 2010. *See* Securities Exchange Act Release No. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR–Phlx–2010–123) (notice of filing and immediate effectiveness of proposal to institute Pilot Program).

[9] The Exchange notes that any positions established under this Pilot would not be impacted by the expiration of the Pilot. For example, a 10-contract FLEX equity option opening position that overlies less than $1 million in the underlying security and expires in January 2015 could be established during the Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

[10] The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the Pilot Program on May 31, 2012, prior to the extension to March 29, 2013 taking effect, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[17] Therefore, the Commission designates the proposal operative upon filing.

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.

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–Phlx–2012–76 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–Phlx–2012–76. 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–Phlx–2012–76 and should be submitted on or before June 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13766 Filed 6–6–12; 8:45 am]

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[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67093; File No. SR–BATS–2012–018]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality

June 1, 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 May 23, 2012, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.9, entitled ''Orders and Modifiers'', and Rule 21.1, entitled ''Definitions'', to modify the operation of BATS Post Only orders for the BATS equity securities trading platform (''BATS Equities'') and the BATS equity options trading platform (''BATS Options''), respectively. The Exchange is also proposing changes to its match trade prevention functionality described in Rules 11.9 and 21.1.

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 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 modify the functionality associated with its existing BATS Post Only Order, which is an order that an entering User[5] intends to be posted to the Exchange's order book and thus will not remove liquidity or route away from the Exchange. In addition to modifying the Exchange's handling of BATS Post Only Orders, the Exchange proposes a minor, unrelated modification to allow an additional option for users of the match trade prevention functionality offered by the Exchange. The Exchange proposes each of these changes for both BATS Equities and BATS Options.

BATS Post Only Orders

Under the Exchange's current rules for BATS Equities, when the Exchange receives a BATS Post Only order that would lock or cross an order displayed by the Exchange, because the Exchange

[5] As defined in BATS Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

cannot display such order at a locking or crossing price and the User has submitted the order with the instruction not to remove liquidity from the Exchange, such order will be cancelled back to the User.

The Exchange proposes to modify the functionality of BATS Post Only Orders described in Rule 11.9(c)(6) to permit such orders to remove liquidity from the Exchange's order book (''BATS Book'') if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity.

The Exchange proposes identical changes to the description of a BATS Post Only order with respect to BATS Options, as set forth in Rule 21.1(d)(9).

Match Trade Prevention

In addition to the changes described above, the Exchange proposes to enhance its existing match trade prevention (''MTP'') functionality, which is a process through which Users can delineate certain orders as being ineligible to match with another order from the same trading firm. Under current MTP functionality, a User can prevent orders from matching with other orders from the same market participant identifier (''MPID''), Exchange member identifier or sponsored participant identifier. The Exchange proposes to allow Users to apply more MTP functionality at a more granular, trading group level. By allowing Users to establish MTP at a trading group level, the Exchange will allow such Users to prevent matched trades amongst traders or desks within a certain firm, but permit orders from outside such group or desk to interact with other firm orders.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that the proposed modification to the handling of BATS Post Only Orders is consistent with the requirements of Section 6(b) of the Act,[8] particularly Section 6(b)(5),[9] in that the change will help to enhance executions for market participants that utilize BATS Post Only Orders. The Exchange believes that the provision of an additional level at which a User may apply match trade prevention is consistent with the requirements of Section 6(b)(5) of the Act,[10] because the ability to prevent matches amongst the same trading group identifier will allow Users to better manage order flow and prevent undesirable executions against themselves. The Exchange notes that a similar functionality was effective upon filing with the Commission for EDGX Exchange, Inc. (''EDGX'').[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposal would allow the Exchange to immediately offer price-improving or economically-neutral executions on BATS Post Only Orders that currently would be cancelled and MTP functionality similar to that already offered by other exchanges.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[17] Therefore, the Commission designates the proposal operative upon filing.

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.

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 Exchange 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–BATS–2012–018 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* EDGX Exchange, Inc. Rule 11.9(f); Securities and Exchange Act Release No. 53428 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR–EDGX–2010–18), which was based on NYSE Arca Equities Rule 7.31(qq).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] *See* NASDAQ Rules 4751(f)(10) and 4757(a)(4); EDGX Rule 11.9(f); NYSE Arca Equities Rule 7.31(qq).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–BATS–2012–018. 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–BATS–2012–018 and should be submitted on or before June 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13765 Filed 6–6–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67092; File No. SR–BYX–2012–009]

Self-Regulatory Organizations; BATS–Y Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BYX Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality

June 1, 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 May 23, 2012, BATS–Y Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.9, entitled ''Orders and Modifiers'', to modify the operation of BATS Post Only orders. The Exchange is also proposing changes to its match trade prevention functionality described in Rule 11.9.

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 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 modify the functionality associated with its existing BATS Post Only Order, which is an order that an entering User[5] intends to be posted to the Exchange's order book and thus will not remove liquidity or route away from the Exchange. In addition to modifying the Exchange's handling of BATS Post Only Orders, the Exchange proposes a minor, unrelated modification to allow an additional option for users of the match trade prevention functionality offered by the Exchange.

BATS Post Only Orders

Under the Exchange's current rules, when the Exchange receives a BATS Post Only order that would lock or cross an order displayed by the Exchange, because the Exchange cannot display such order at a locking or crossing price and the User has submitted the order with the instruction not to remove liquidity from the Exchange, such order will be cancelled back to the User.

The Exchange proposes to modify the functionality of BATS Post Only Orders described in Rule 11.9(c)(6) to permit such orders to remove liquidity from the Exchange's order book (''BATS Book'') if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity.

Match Trade Prevention

In addition to the changes described above, the Exchange proposes to enhance its existing match trade prevention (''MTP'') functionality, which is a process through which Users can delineate certain orders as being ineligible to match with another order from the same trading firm. Under current MTP functionality, a User can prevent orders from matching with other orders from the same market participant identifier (''MPID''), Exchange member identifier or sponsored participant identifier. The Exchange proposes to allow Users to apply more MTP functionality at a more granular, trading group level. By allowing Users to establish MTP at a trading group level, the Exchange will allow such Users to prevent matched trades amongst traders or desks within a certain firm, but permit orders from outside such group or desk to interact with other firm orders.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it is designed to prevent fraudulent and manipulative acts and

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in BYX Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that the proposed modification to the handling of BATS Post Only Orders is consistent with the requirements of Section 6(b) of the Act,[8] particularly Section 6(b)(5),[9] in that the change will help to enhance executions for market participants that utilize BATS Post Only Orders. The Exchange believes that the provision of an additional level at which a User may apply match trade prevention is consistent with the requirements of Section 6(b)(5) of the Act,[10] because the ability to prevent matches amongst the same trading group identifier will allow Users to better manage order flow and prevent undesirable executions against themselves. The Exchange notes that a similar functionality was effective upon filing with the Commission for EDGX Exchange, Inc. (''EDGX'').[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposal would allow the Exchange to immediately offer price-improving or economically-neutral executions on BATS Post Only Orders that currently would be cancelled and MTP functionality similar to that already offered by other exchanges.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[17] Therefore, the Commission designates the proposal operative upon filing.

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.

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 Exchange 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–BYX–2012–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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–BYX–2012–009 and should be submitted on or before June 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13764 Filed 6–6–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* EDGX Exchange, Inc. Rule 11.9(f); Securities and Exchange Act Release No. 53428 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR–EDGX–2010–18), which was based on NYSE Arca Equities Rule 7.31(qq).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] *See* NASDAQ Rules 4751(f)(10) and 4757(a)(4); EDGX Rule 11.9(f); NYSE Arca Equities Rule 7.31(qq).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67086; File No. SR–CBOE–2012–043]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Spread Margin Rules

May 31, 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 May 29, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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

This filing proposes universal spread margin rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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

An option spread is typically characterized by the simultaneous holding of a long and short option of the same type (put or call) where both options overly the same security or instrument, but have different exercise prices and/or expirations. To be eligible for spread margin treatment, the long option may not expire before the short option. These long put/short put or long call/short call spreads are known as two-legged spreads.

Since the inception of the Exchange, the margin requirements for two-legged spreads have been specified in CBOE margin rules.[3] The margin requirement for a two-legged spread that is eligible for spread margin treatment is its maximum risk based on the intrinsic values of the options, exclusive of any net option premiums paid or received when the positions were established.[4] For example, consider the following equity option spread:

Long 1 XYZ May2011 60 call
Short 1 XYZ May2011 50 call

The maximum potential loss (*i.e.,* risk) for this particular spread would be a scenario where the price of the underlying stock (XYZ) is $60 or higher. If the market price of XYZ is $60, the May2011 60 call would have an intrinsic value of zero, because the right to buy at $60 when XYZ can be purchased in the market for $60 has no intrinsic value. The May2011 50 call would have an intrinsic value of $10 because of the $10 advantage gained by being able to buy at $50 when it costs $60 to purchase XYZ in the market. Because each option contract controls 100 shares of the underlying stock, the intrinsic value, which was calculated on a per share basis, is multiplied by 100, resulting in an aggregate intrinsic value of $1,000 for the May2011 50 call.[5] However, because the May2011 50 call is short, the $1,000 intrinsic value is a loss, because it represents the cost to close (*i.e.,* buy-back) the short option. At an assumed XYZ market price of $60, netting the intrinsic values of the options results in a loss of $1,000 (−$1,000 + 0).[6] Therefore, the maximum risk of, and margin requirement for, this spread is $1,000. If there is no maximum risk (*i.e.,* there is no loss calculated at any of the exercise prices found in the spread), no margin is required, but under Exchange margin rules any net debit incurred to establish the spread would be required to be paid for in full. Current CBOE Rule 12.3(c)(5)(C)(4) provides that, when the exercise price of the long call (or short put) is less than or equal to the exercise price of the offsetting short call (or long put), no margin is required; and that when the exercise price of the long call (or short put) is greater than the exercise price of the offsetting short call (or long put) the amount of margin required is the lesser of the margin requirement on the short option, if treated as uncovered, or the difference in the aggregate exercise prices. The intrinsic value calculation described above is essentially expressed, in different words, in the current rule language.

The maximum risk remains constant at $1,000 for XYZ market prices higher than $60 because for each incremental increase in the assumed market price of XYZ above $60, the loss on the short option is equally offset by a gain on the long option in terms of their intrinsic values. By calculating the net intrinsic value of the options at each exercise price found in the spread, as in the computation exemplified above, the maximum risk of, and margin requirement for, any two-legged spread can be determined.

On August 23, 1999, the Exchange implemented specific definitions and margin requirements for butterfly spreads and box spreads.[7] In a butterfly spread, a two-legged spread is combined with a second two-legged spread (same type—put or call—and same underlying security) as in the following example:

Long 1 XYZ May2011 50 call
Short 1 XYZ May2011 60 call

Long 1 XYZ May2011 70 call
Short 1 XYZ May2011 60 call

Note that a short XYZ May2011 60 call option is common to both two-legged spreads. Therefore, by adding the May2011 60 call options together, the two spreads can be combined to form a butterfly spread as follows:

Long 1 XYZ May2011 50 call
Short 2 XYZ May2011 60 calls
Long 1 XYZ May2010 70 call[8]

The margin requirement for a butterfly spread is its maximum risk. The maximum risk can be determined

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Chapter 12. Rule 12.3(c)(5)(C)(4).

[4] Any net credit received for establishing a spread may be applied to the margin requirement, if any. In the case of a spread that is established for a net debit, the net debit must be paid for in full.

[5] The result would be multiplied by the number of contracts when more than a one-by-one contract spread is involved.

[6] At an assumed market price of $50, both the May2011 50 call and May2011 60 call would have no intrinsic value. Thus, there is no risk (provided any net debit is paid for in full) at an assumed market price of $50.

[7] The butterfly and box spread margin rules, and various other CBOE margin rule changes, were approved by the Securities and Exchange Commission on July 27, 1999. *See* Securities Exchange Act Release No. 41658 (July 27, 1999), 64 FR 42736 (SR–CBOE–97–67).

[8] This configuration represents a long butterfly spread. The opposite (*i.e.,* short 1 XYZ May2011 50 call, long 2 XYZ May2011 60 calls and short 1 XYZ May2011 70 call) would be a short butterfly spread.

in the same manner as demonstrated above for two-legged spreads. In this example, the net intrinsic values would be calculated at assumed prices for the underlying of $50, $60 and $70, which are the exercise prices found in the butterfly spread. The greatest loss, if any, from among the net intrinsic values is the margin requirement. For this particular butterfly spread, there is no loss in terms of net intrinsic values at any of the assumed underlying prices ($50, $60 or $70). Therefore, there is no margin requirement. However, the net debit incurred to establish this butterfly spread must be paid for in full.

In a box spread, a two-legged call spread is combined with a two-legged put spread. The exercise prices of the long and short put options are the reverse of the call spread. All options have the same underlying security and expiration date. An example is as follows:

Long 1 XYZ May2011 50 call
Short 1 XYZ May2011 60 call
Long 1 XYZ May2011 60 put
Short 1 XYZ May2011 50 put [9]

The margin requirement for a box spread, unless all options are European style, is its maximum risk. The maximum risk of a box spread can be determined in the same manner as demonstrated above for two-legged spreads and butterfly spreads. In this example, the net intrinsic values would be calculated at assumed prices for the underlying of $50 and $60, which are the exercise prices found in the box spread. The greatest loss, if any, from among the net intrinsic values is the margin requirement. For this particular box spread (long box spread), there is no loss in terms of net intrinsic values at either of the assumed underlying prices ($50 or $60). Therefore, there is no margin requirement. However, the net debit incurred to establish this box spread must be paid for in full. In the case of a long box spread where all options are European style, the margin requirement is 50% of the difference in the exercise prices (in aggregate).[10]

On August 13, 2003, the Exchange issued a Regulatory Circular (RG03–066) to define additional types of multi-leg option spreads, and to set margin requirements for these spreads through interpretation of Exchange margin rules. The Regulatory Circular had been filed with the Commission and was approved on August 8, 2003, on a one-year pilot basis.[11] The Regulatory Circular was reissued as RG04–90 (dated August 16, 2004) and RG05–37 (dated April 6, 2005) pursuant to one-year extensions of the pilot granted by the Commission on August 6, 2004, and March 22, 2005, respectively.[12]

The Regulatory Circular identified seven spread strategies by presenting an example of each spread's configuration, and numbering each configuration, rather than designating the configurations by names commonly used in the industry. The seven configurations would be referred to in the industry as:

Long Condor Spread,
Short Iron Butterfly Spread,
Short Iron Condor Spread,
Long Calendar Butterfly Spread,
Long Calendar Condor Spread,
Short Calendar Iron Butterfly Spread and
Short Calendar Iron Condor Spread.

On July 30, 2004, the Exchange filed proposed rule amendments with the Commission to codify the provisions of the Regulatory Circular in Exchange margin rules. Included in the proposal were definitions of Long Condor Spread (which includes a Long Calendar Condor Spread), Short Iron Butterfly Spread (which includes a Short Calendar Iron Butterfly Spread), and Short Iron Condor Spread (which includes a Short Calendar Iron Condor Spread). In addition, it was proposed that the existing definition of Long Butterfly Spread be amended to include a Long Calendar Butterfly Spread. The margin requirements, specific to each type of spread, as had been set-forth in the Regulatory Circulars, were also proposed for inclusion in Exchange margin rules.[13] Contemporaneously, the New York Stock Exchange filed similar margin rule proposals with Commission.[14] CBOE's proposed rule amendment was approved by the Commission on December 14, 2005.[15]

Because a number of variations are possible for each basic type of multi-leg option spread strategy, it is problematic to maintain margin rules specific to each.[16] It becomes difficult to continually designate each variation by name, and define and specify a margin requirement for it in the rules. For example, consider the following spreads:

Long 10 XYZ May2011 50 call
Short 10 XYZ May2011 55 call
Long 5 XYZ May2010 70 call
Short 5 XYZ May2011 60 call

These two spreads combined are a variation of a condor spread. In a basic condor spread, the number of option contracts would be equal across all option series and the interval between the exercise prices of each spread would be equal. In the above variation, there is a 10-by-10 contract spread vs. a 5-by-5 contract spread, and a spread with a 5 point interval between exercise prices vs. a spread with a 10 point interval between exercise prices. The two spreads in the above example offset each other in terms of risk, and no margin requirement is necessary. However, margin of $5,000 is required under the Exchange's current margin rules, because this variation of the condor spread is not specified in the rules. Because it is not recognized in Exchange margin rules, the two spreads must be treated as separate, unrelated spread strategies for margin purposes. As a result, spread margin of $5,000 is required (on the May2011 70/May2010 60 call spread) versus no requirement (other than pay for the net debit in full), if the two spreads could be recognized as one strategy.

This rule filing proposes a single, universal definition of a spread and one spread margin requirement that consists of a universal margin requirement computation methodology. In this manner, the margin requirement for all types of option spreads would be covered by a single rule, without regard to the number of option series involved or the term commonly used in the

[9] This configuration represents a long box spread. The opposite (*i.e.,* short 1 XYZ May2011 50 call, long 1 XYZ May2011 60 call, short 1 May2011 60 put and long 1 XYZ May2011 50 put) would be a short box spread.

[10] A 50% margin requirement is allowed because a long box spread has an intrinsic value at expiration equal to the difference in the exercise prices (in aggregate), which will more than cover the net debit incurred to establish the spread. A long box spread is, essentially, a riskless position. The difference between the value of the long box spread realizable at expiration and the lower cost to establish the spread represents a risk-free rate of return.

[11] *See* Securities Exchange Act Release No. 48306 (Aug. 8, 2003), 68 FR 48974 (Aug. 15, 2003) (SR–CBOE–2003–24).

[12] *See* Securities Exchange Act Release No. 50164 (Aug. 6, 2004), 69 FR 50405 (Aug. 16, 2004) and Securities Exchange Act Release No. 51407 (Mar. 22, 2005), 70 FR 15669 (Mar. 28, 2005).

[13] *See* Securities Exchange Act Release No. 52739 (Nov. 4, 2005), 70 FR 69173 (Nov. 14, 2005) (SR–CBOE–2004–53). This release also noticed a partial amendment (Amendment No. 1) that was filed on August 23, 2005 (in coordination with the New York Stock Exchange).

[14] *See* Securities Exchange Act Release No. 52738 (Nov. 4, 2005), 70 FR 68501 (Nov. 10, 2005) (SR–NYSE–2004–39). For approval order, *see* Securities Exchange Act Release No. 52951 (Dec. 14, 2005), 70 FR 75523 (Dec. 20, 2005).

[15] *See* Securities Exchange Act Release 52950 (Dec. 14, 2005), 70 FR 75512 (Dec. 20, 2005).

[16] A long calendar butterfly spread is an example of a variation. The basic type would be butterfly spread. In a long calendar butterfly spread, one of the long options expires after the other two options expire concurrently, whereas in the basic butterfly spread, all options expire concurrently. Another example of a variation of a butterfly spread would be a configuration where the intervals between the exercise prices involved are not equal. In a basic butterfly spread, the intervals are equal (*i.e.,* symmetric).

industry to refer to the spread. This would eliminate the need to define, and refer to, particular spreads by monikers commonly used in the industry. Therefore, this rule filing proposes to eliminate definitions of each particular spread strategy (e.g., butterfly, condor, iron butterfly, iron condor, etc.), with one exception.

The one exception would be ''Box Spreads.'' A definition for ''Box Spread'' would be retained because loan value is permitted under Exchange margin rules for box spreads. Box spreads are the only type of spread that is eligible for loan value. They, therefore, need to be specially identified in the rules.

Additionally, the proposed rule changes would automatically enable variations not currently recognized in Exchange margin rules (because only a limited number of specific spread strategies are defined) to receive spread margin treatment.

A new definition of a spread is proposed as Rule 12.3(a)(5). The key to the definition is that it designates a spread as being an equivalent long and short position in different call option series and/or equivalent long and short positions in different put option series, or a combination thereof.[17] With respect to equivalency of long and short positions, the definition further requires that the long and short positions be equal in terms of the aggregate value of the underlying security or instrument covered by each leg. The aggregate value equivalency is included so that it is clear that a spread composed of one standard option contract and one reduced value option contract covering the same underlying security or instrument would be permissible. For example, if reduced value options, equal to 1/10th the value of a standard option contract are trading, a spread consisting of 10 reduced value contracts vs. one standard contract would be permissible.[18] As with spreads under the current rule, the proposed rule further requires that the short option(s) expire after, or at the same time as, the long option(s). Additionally, under the proposed rule definition, all options in a spread must have the same exercise style (American or European) and either be composed of all listed options or all over-the-counter (OTC) options. Spreads that do not conform to the definition would be ineligible for spread margin treatment.

Amendments to CBOE Rule 12.3(c)(5)(C)(4) are proposed to implement language specifying how a margin requirement is to be computed for any spread that meets the definition, and limit eligibility for spread margin treatment to spreads that meet the definition. The computational method would require that the intrinsic value of each option series contained in a spread be calculated for assumed prices of the underlying security or instrument. The exercise prices of the option series contained in the spread would be required to be used as the assumed prices of the underlying security or instrument. For each assumed price of the underlying, the intrinsic values would be netted. The greatest loss from among the netted intrinsic values would be the spread margin requirement. As an example, consider the following spread:

Long 1 XYZ May2011 50 put
Short 1 XYZ May2011 60 put
Short 1 XYZ May2011 65 call
Long 1 XYZ May2011 70 call

This spread is a variation of an iron condor spread. It consists of a put spread and a call spread, with all options covering the same underlying security or instrument. There are an equal number of contracts long and short in both the put spread and call spread. The short options expire with or after the long options (with, in this case). It is assumed that all options are of the same exercise style (American or European). This spread would, therefore, be eligible for the spread margin requirement computation in this proposed rule amendment.

Note that in this example, the interval between the exercise prices in the put spread is greater than the interval in the call spread. In a basic iron condor spread, these intervals are equal. This particular configuration is not recognized under current Exchange margin rules. Therefore the component put spread and call spread must be viewed as separate, unrelated strategies for margin purposes. Under current Exchange margin rules, there is a $1,000 margin requirement on the put spread and $500 margin requirement on the call spread. However, there are offsetting properties between the two spreads, and, if viewed collectively, a total margin requirement of $1,500 is not necessary. Using the proposed computational methodology, a margin requirement would be calculated as follows:

INTRINSIC VALUES FOR ASSUMED PRICES OF THE UNDERLYING

Spread	$50	$60	$65	$70
Long 1 XYZ May2011 50 put	0	0	0	0
Short 1 XYZ May2011 60 put	$(1,000)	0	0	0
Short 1 XYZ May2011 65 call	0	0	0	$(500)
Long 1 XYZ May2011 70 call	0	0	0	0
Net intrinsic values	$(1,000)	0	0	$(500)

The greatest loss from among the netted intrinsic values is $1,000.[19] Under the proposed rule amendments, this would be the margin requirement. This spread margin requirement is $500 less than that required under current Exchange margin rules. Note that under both the current and proposed rules, any net debit incurred when establishing the spread is required to be paid for in full.

It can be intuitively shown that the put spread and call spread in the example do not have $1,500 of risk when viewed collectively. If the price of the underlying is at or above $60, the put spread would have no intrinsic value. At or below $65, the call spread would have no intrinsic value. Thus, both spreads would never be at risk at any given price of the underlying. Therefore, margin need be required on only one of the spreads—the one with the highest risk. In this example, the put spread has the highest risk ($1,000), and that is the risk (and margin requirement)

[17] An option series means particular exercise price *and* expiration date with respect to a put or call option.

[18] Currently, spreads consisting of standard contracts and reduced value contracts are permitted by the rules, although the current rule does not go into detail to require equivalent aggregate underlying value between the long and short legs.

[19] Again, depending on the type of spread strategy, there may be no loss among the netted intrinsic values, in which case there would be no margin requirement.

that would be rendered by the proposed computational methodology.

In summary, the proposed rule amendments would enable the Exchange, for margin purposes, to accommodate the many types of spread strategies utilized in the industry today in a fair and efficient manner.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [20] of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5).[21] Because this rule filing proposes a single, universal definition of a spread and one spread margin requirement that consists of a universal margin requirement computation methodology, it promotes just and equitable principles of trade and fosters cooperation and coordination with persons engaged in facilitating transactions in securities. By adding clarity and consistency to margin requirements, it also removes impediments to and perfects the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

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–CBOE–2012–043 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–CBOE-*2012–043.* 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 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–CBOE–2012–043 and should be submitted on or before June 28, 2012.

[22] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13763 Filed 6–6–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2012, there were three applications approved. This notice also includes information on one application, approved in April 2012, inadvertently left off the April 2012 notice. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: Tri State Airport Authority, Huntington, West Virginia.

APPLICATION NUMBER: 12–07–C–00–HTS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $2,369,532.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2012.

ESTIMATED CHARGE EXPIRATION DATE: October 1, 2017.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

Brief Description of Projects Approved for Collection and Use

Terminal center—phase I.

PFC application.

Improve airport drainage.

Acquire snow removal equipment.

Install perimeter fencing.

Rehabilitate terminal building.

Rehabilitate taxiway A (west).

Access road repair.

Rehabilitate taxiways g, E, C, F, and A (ramp edge).

Terminal center—phase II.

Environmental assessment—airfield development.

Brief Description of Projects Approved for Collection

Relocate taxiway A (east).

Install airport beacon.

Security enhancements.

Access road and parking lot.

Terminal center—phase III.

Acquire runway protection zone land.

Rehabilitate terminal building—phase IV.

Reconfigure airside terminal.

Replace airfield generators.

Seal coat runway.

DECISION DATE: April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Matthew DiGiulian, Beckley Airports Field Office, (304) 252–6217.

PUBLIC AGENCY: Tulsa Airports Improvement Trust, Tulsa, Oklahoma.

APPLICATION NUMBER: 12–08–C–00–TUL.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $3,430,000.

EARLIEST CHARGE EFFECTIVE DATE: June 1, 2020.

ESTIMATED CHARGE EXPIRATION DATE: December 1, 2020.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tulsa International Airport.

Brief Description of Projects Approved for Collection and Use

Design and enabling projects for concourse A rehabilitation and improvement.

Passenger loading bridges.

Security exit lane equipment.

PFC consulting fees.

Brief Description of Disapproved Project

Electrical generators.

DETERMINATION: Disapproved. This project did not meet the requirements of § 158.15(b).

DECISION DATE: May 8, 2012.

FOR FURTHER INFORMATION CONTACT: Don Harris, Arkansas/Oklahoma Airports Development Office, (817) 222–5634.

PUBLIC AGENCY: Port of Port Angeles, Port Angeles, Washington.

APPLICATION NUMBER: 12–08–C–00–CLM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $161,209.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2012.

ESTIMATED CHARGE EXPIRATION DATE: April 1, 2014.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

Brief Description of Projects Approved for Collection and Use

Terminal entrance road construction.

Taxilanes construction, phase II.

Terminal apron reconstruction.

Runway 8/26 lighting rehabilitation.

Taxilanes construction, phase III.

PFC administration.

DECISION DATE: May 8, 2012.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

PUBLIC AGENCY: Yuma County Airport Authority, Yuma, Arizona.

APPLICATION NUMBER: 12–04–C–00–NYL.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $250,000.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2018.

ESTIMATED CHARGE EXPIRATION DATE: October 1, 2021.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Yuma Marine Corps Air Station/Yuma International Airport.

Brief Description of Project Approved for Collection and Use

Widen parallel taxiway Z.

DECISION DATE: May 18, 2012.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

AMENDMENT TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended estimated net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
05–05–C–07–EWR Newark, NJ	04/06/12	$556,442,435	$566,136,035	07/1/11	09/1/11
10–08–C–01–SAV Savannah, GA	05/03/12	4,066,265	6,669,248	04/1/16	12/1/16
11–17–C–02–BNA Nashville, TN	05/04/12	2,512,500	2,797,105	03/1/17	06/1/17
08–07–C–01–DTW Detroit, MI	05/18/12	257,020,320	227,653,568	08/1/34	02/1/34

Issued in Washington, DC, on May 31, 2012.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2012–13690 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0045; Notice 1]

Hyundai Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: Hyundai America Technical Center, Inc., on behalf of Hyundai Motor Company (collectively referred to as ''Hyundai'') [1] has determined that certain model year 2012 Hyundai Veracruz multipurpose passenger vehicles (MPV) manufactured August 9, 2011, through January 8, 2012, that were equipped with 7J x 18 wheel rims, do not fully comply with paragraph S4.3.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or less.* Hyundai has filed an appropriate report dated February 9, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Hyundai submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Hyundai's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vehicles involved: Affected are approximately 2,764 model year 2012 Hyundai Veracruz vehicles produced beginning on August 9, 2011, through January 8, 2012, that were equipped with 7J x 18 wheel rims at the assembly plant.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 2,764 [2] vehicles that Hyundai no longer controlled at the time it determined that the noncompliance existed.

Noncompliance: Hyundai explains that the noncompliance is that the rim size information required by paragraph S4.3.3 of FMVSS No. 110 was omitted from the certification labels that it installed on the affected vehicles.

Rule text: Paragraph S4.3.3 of FMVSS No. 110 requires:

S4.3.3 Additional labeling information for vehicles other than passenger cars. Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format

Truck Example—Suitable Tire-Rim Choice
GVWR: 2,441 kilograms (5381 pounds).
GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.0 rims at 248 kPa (36 psi) cold single.
GAWR: Rear—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.00 rims, at 248 kPa (36 psi) cold single.

Summary of Hyundai's Analysis and Arguments

Hyundai believes that the missing rim size information on the certification label is inconsequential as it relates to motor vehicle safety, because this information is readily available to the vehicle owner through other sources that are required to be furnished with the vehicle. The rim size is marked on the rims and is included in the Owner's Manual, which is referenced as an information source by the tire placard which is positioned adjacent to the certification label on the ''B'' pillar. FMVSS No. 110 paragraph 4.4.2(b) [3] requires that each rim be marked with the rim size designation. The affected vehicles are equipped with rims that are marked with the rim size and meet the requirements of FMVSS No. 110 paragraph 4.4.2.

Additionally, the tire placard required by FMVSS No. 110 paragraph 4.3(d) requires that the tire size designation be provided for the tires installed at the time of the first purchase and FMVSS No. 110 paragraph S4.3(f) requires that the placard state ''See Owner's Manual for Additional Information''. The affected vehicles are equipped with placards that meet the requirements of FMVSS No. 110 paragraph 4.3.

Hyundai also stated that they are not aware of any notices, bulletins, or other communications that relate directly to the noncompliance sent to more than one manufacturer, distributor, dealer, or purchaser.

Hyundai has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 110.

In summation, Hyundai believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* By logging onto the Federal Docket Management System

[1] Hyundai America Technical Center, Inc., is a corporation registered under the laws of the state of Michigan.

[2] Hyundai's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Hyundai as a motor vehicle manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 2,764 affected vehicles. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Hyundai notified them that the subject noncompliance existed.

[3] The citation that Hyundai referenced for rim size designation marking requirements in its petition, paragraph S4.2.2, is incorrect. The correct citation is paragraph S4.4.2.

(FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: July 9, 2012.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: May 31, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–13801 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review: Report of Passengers Denied Confirmed Space—BTS Form 251

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for re-instatement of an expired collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 27, 2012 (77 FR 18305). There were no comments.

DATES: Written comments should be submitted by July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Cecelia Robinson, Office of Airline Information, RTS–42, Room E34–410, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4405, Fax Number (202) 366–3383 or email *cecelia.robinson@dot.gov.*

Comments: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: RITA/BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0018

Title: Report of Passengers Denied Confirmed Space.

Form No.: BTS Form 251.

Type of Review: Re-instatement of an expired collection.

Respondents: Large certificated air carriers.

Number of Respondents: 14.

Number of Responses: 56.

Total Annual Burden: 560 hours.

Needs and Uses: BTS Form 251 is a one-page report on the number of passengers denied seats either voluntarily or involuntarily, whether these bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. air carriers that account for at least 1 percent of domestic scheduled passenger service must report all operations with 30 seat or larger aircraft that depart a U.S. airport.

Carriers do not report data from inbound international flights because the protections of 14 CFR part 250 *Oversales* do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntarily denied-boarding rate has decreased from 4.38 per 10,000 passengers in 1980 to 0.71 for the quarter ended December 2011. The publishing of the carriers' individual denied boarding rates has negated the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's customer service practices. A rapid sustained increase in the rate of denied boarding may indicate operational difficulties. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with lower incidences of bumping passengers. This information is available in the *Air Travel Consumer Report* at: *http://airconsumer.ost.dot.gov/reports/index.htm.* The *Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rule would be impossible.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on May 31, 2012.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–13802 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review: Airline Service Quality Performance—Part 234

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for re-instatement of an expired collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 27, 2012 (77 FR 18306). There were no comments.

DATES: Written comments should be submitted by July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Cecelia Robinson, Office of Airline Information, RTS–42, Room E34–410, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4405, Fax Number (202) 366–3383 or email *cecelia.robinson@dot.gov.*

Comments: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: RITA/BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0041

Title: Airline Service Quality Performance –Part 234.

Form No.: BTS Form 234.

Type Of Review: Re-instatement of an expired collection.

Respondents: Large certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues.

Number of Respondents: 14.

Total Number of Annual Responses: 168.

Estimated Time per Response: 20 hours.

Total Annual Burden: 3,360 hours.

Needs and Uses

Consumer Information

Part 234 gives air travelers information concerning their chances of on-time flights and the rate of mishandled baggage by the 14 largest scheduled domestic passenger carriers.

Reducing and Identifying Traffic Delays

The Federal Aviation Administration uses Part 234 data to pinpoint and analyze air traffic delays. Wheels-up and wheels-down times are used in conjunction with departure and arrival times to show the extent of ground delays. Actual elapsed flight time, wheels-down minus wheels-up time, is compared to scheduled elapsed flight time to identify airborne delays. The reporting of aircraft tail number allows the FAA to track an aircraft through the air network, which enables the FAA to study the ripple effects of delays at hub airports. The data can be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels. The identification of the reason for delays allows the FAA, airport operators, and air carriers to pinpoint delays under their control.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on May 31, 2012.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–13803 Filed 6–6–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Survey of Foreign Ownership of U.S. Securities as of June 30, 2012

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2012. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*). This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHLA (2012) and instructions may be printed from the Internet at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx.*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The panel for this survey is based primarily on the level of foreign resident holdings of U.S. securities reported on the June 2009 benchmark survey of foreign resident holdings of U.S. securities, and will consist mostly of the largest reporters on that survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What To Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the Summary, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or (646) 720–6300, email: *SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to the Federal Reserve Board of Governors, at (202) 452–3476, or to Dwight Wolkow, at (202) 622–1276, or by email: *comments2TIC@do.treas.gov*.

When To Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2012.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated

average annual burden associated with this collection of information is 486 hours per report for the largest custodians of securities, and 110 hours per report for the largest issuers of securities that have data to report and are not custodians. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2012–13853 Filed 6–6–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2011 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. section 552b, the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during 2011 has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management.

DATES: *Effective Date:* This notice is effective on June 7, 2012.

ADDRESSES: The report is available for public inspection and requests for copies should be addressed to: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue NW., Washington, DC 20224, telephone number (202) 622–5164 (not a toll free number). The report is also available at *www.irs.gov.*

FOR FURTHER INFORMATION CONTACT: Ruth Vriend, AP:TPV:ART, Internal Revenue Service/Appeals, 999 N. Capitol NE., Ste. 734, Washington, DC 20002, telephone (202) 435–5739 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore, is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Sheldon M. Kay,

Deputy Chief, Appeals.

[FR Doc. 2012–13780 Filed 6–6–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Thursday,
No. 110 June 7, 2012

Part II

Environmental Protection Agency

40 CFR Parts 60 and 63
National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2008–0708, FRL–9679–3]

RIN 2060–AQ58

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines under section 112 of the Clean Air Act. The proposed amendments include alternative testing options for certain large spark ignition (generally natural gas-fueled) stationary reciprocating internal combustion engines, management practices for a subset of existing spark ignition stationary reciprocating internal combustion engines in sparsely populated areas and alternative monitoring and compliance options for the same engines in populated areas. The EPA is also proposing to include a limited temporary allowance for existing stationary emergency area source engines to be used for peak shaving and non-emergency demand response. In addition, the EPA is proposing to increase the hours that stationary emergency engines may be used for emergency demand response. The proposed amendments also correct minor mistakes in the pre-existing regulations.

DATES: *Comments.* Comments must be received on or before July 23, 2012, or 30 days after date of public meeting if later.

Public Meeting. If anyone contacts us requesting to speak at a public meeting by June 14, 2012, a public meeting will be held on June 22, 2012. If you are interested in attending the public meeting, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a meeting will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0708, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue NW., Washington, DC. 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–2008–0708. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 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 *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.

Public Meeting: If a public meeting is held, it will be held at the EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC or an alternate site nearby.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. The EPA also relies on documents in Docket ID Nos. EPA–HQ–OAR–2002–0059, EPA–HQ–OAR–2005–0029, EPA–HQ–OAR–2005–0030, and EPA–HQ–OAR–2010–0295, and incorporated those dockets into the record for this action. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2469; facsimile number (919) 541–5450; email address *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
- A. Executive Summary
- B. Does this action apply to me?
- C. What should I consider as I prepare my comments for the EPA?

II. Summary of Proposed Amendments
- A. Total Hydrocarbon Compliance Demonstration Option
- B. Emergency Demand Response/Peak Shaving
- C. Non-Emergency Stationary SI RICE Greater than 500 HP Located at Area Sources
- D. Stationary Agricultural RICE in San Joaquin Valley
- E. Remote Areas of Alaska
- F. Miscellaneous Corrections and Revisions
- G. Compliance Date

III. Summary of Environmental, Energy and Economic Impacts
- A. What are the air quality impacts?
- B. What are the cost impacts?
- C. What are the benefits?
- D. What are the non-air health, environmental and energy impacts?

IV. Solicitation of Public Comments and Participation

V. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act of 1995
- E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The purpose of this action is to propose amendments to the national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) under section 112 of the Clean Air Act (CAA). This proposal was developed to address certain issues that have been raised by different stakeholders through lawsuits, several petitions for reconsideration of the 2010 RICE NESHAP amendments and other communications. This proposal also provides clarifications and corrects minor mistakes in the current RICE NESHAP and revises the new source performance standards (NSPS) for stationary engines, 40 CFR part 60, subparts IIII and JJJJ, for consistency with the RICE NESHAP.

This action is conducted under the authority of section 112 of the CAA, ''Hazardous Air Pollutants,'' (HAP) which requires the EPA to establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing sources in regulated source categories.

2. Summary of the Major Provisions of the Regulatory Action

After promulgation of the 2010 RICE NESHAP amendments, the EPA received several petitions for reconsideration, legal challenges, and other communications raising issues of practical implementability, and certain factual information that had not been brought to the EPA's attention during the rulemaking. The EPA has considered this information and believes that amendments to the rule to address certain of these issues are appropriate. Therefore, the EPA is proposing to amend 40 CFR part 63, subpart ZZZZ, NESHAP for Stationary RICE. The current regulation applies to owners and operators of existing and new stationary RICE at major and area sources of HAP emissions. The applicability of the rule remains the same and is not changed by this proposal. The EPA is also proposing to amend the NSPS for stationary engines to conform with certain of the amendments proposed for the NESHAP.

The EPA proposes to add an alternative compliance demonstration option for stationary 4-stroke rich burn (4SRB) spark ignition (SI) engines subject to a 76 percent or more formaldehyde reduction. Owners and operators of 4SRB engines would be permitted to demonstrate compliance with the 76 percent formaldehyde reduction emission standard by testing total hydrocarbon (THC) emissions and showing that the engine is achieving at least a 30 percent reduction of THC emissions. The alternative compliance option would provide a less expensive and less complex, but equally effective, method for demonstrating compliance than testing for formaldehyde.

Certain stationary RICE are maintained in order to be able to respond to emergency power needs. The EPA proposes to allow owners and operators of such stationary emergency RICE to operate their engines as part of an emergency demand response program within the 100 hours per year that is already permitted for maintenance and testing of the engines. The 100 hours per year allowance would ensure that a sufficient number of hours are permitted for engines to meet independent system operator (ISO) and regional transmission organization (RTO) tariffs and other requirements for participating in various emergency demand response programs and would assist in stabilizing the grid, preventing electrical blackouts and supporting local electric system reliability. A temporary limited allowance that will expire on April 16, 2017 (the date by which full compliance with the NESHAP From Coal and Oil-Fired Electric Utility Steam Generating Units (77 FR 9304) is expected), is being proposed for stationary emergency engines located at area sources of HAP emissions to be used for up to 50 hours per year for any non-emergency purpose, including peak shaving. The 50 hours is part of the 100 hours per year total allowance for all types of emergency engine operation (except during emergencies where no other power is available, which is not restricted by the rule). The temporary allowance for peak shaving would give sources time to address reliability issues and develop solutions to reliability issues while facilities are coming into compliance with the National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units, which were promulgated on February 16, 2012 (77 FR 9304).

The EPA proposes management practices for owners and operators of existing stationary 4-stroke SI engines above 500 horsepower (HP) that are area sources of HAP emissions and where the engines are remote from human activity. A remote area is defined as either a Department of Transportation (DOT) Class 1 pipeline location,[1] or, if the facility is not on a pipeline, if within a 0.25-mile radius of the facility there are 5 or less buildings intended for human occupancy. The 0.25-mile radius was chosen as the area would be similar to the area used for the DOT pipeline Class location. The EPA proposes that these sources be subject to management practices rather than numeric emission limits and associated testing and monitoring. This would address reasonable concerns with accessibility, infrastructure, and staffing that stem from the remoteness of the engines and higher costs that would be associated with compliance with the existing requirements. The EPA proposes that existing stationary 4-stroke SI engines above 500 HP at area sources that are in populated areas (defined as not in DOT pipeline Class 1 areas, or if not on a pipeline, if within a 0.25-mile radius of the facility there are more than 5 buildings intended for human occupancy) be subject to an equipment standard that requires the installation of HAP-reducing aftertreatment. The EPA has the discretion to set an equipment standard as GACT for engines located at area sources of HAP. Sources would be required to test their engines to demonstrate compliance initially, perform catalyst activity check-ups, and either monitor the catalyst inlet temperature continuously or employ high temperature shutdown devices to protect the catalyst.

To address how certain existing compression ignition (CI) engines are currently regulated, the EPA proposes to specify that any existing certified CI engine above 300 HP at an area source of HAP emissions that was certified to meet the Tier 3 engine standards and was installed before June 12, 2006, is in compliance with the NESHAP. This provision would create regulatory consistency between the same engines installed before and after June 12, 2006. Engines at area sources of HAP for which construction commenced before June 12, 2006, are considered existing engines under the NESHAP.

[1] A Class 1 location is defined as an offshore area or any class location unit that has 10 or fewer buildings intended for human occupancy.

The EPA is proposing amendments to the requirements for existing stationary Tier 1 and Tier 2 certified CI engines located at area sources that are subject to state and locally enforceable requirements requiring replacement of the engine by June 1, 2018. This is meant to deal with a specific concern regarding the interaction of the NESHAP with certain rules for agricultural engines in the San Joaquin Valley in California. The EPA is proposing to allow these engines to meet management practices under the RICE NESHAP from the May 3, 2013 compliance date until January 1, 2015, or 12 years after installation date, but not later than June 1, 2018. This provision would deal with the issue of owners and operators having to install controls on their engines in order to meet the RICE NESHAP, and then having to replace their engines shortly thereafter due to state and local rules specifying the replacement of engines. Owners and operators will have additional time to replace their engines without having to install controls, but will be required to use management practices during that period.

The last major change the EPA proposes to make is to broaden the definition of remote area sources of Alaska in the RICE NESHAP. Currently, remote areas are those that are not on the Federal Aid Highway System (FAHS). This change would permit existing stationary CI engines at other remote area sources in Alaska to meet management practices as opposed to emission standards likely necessitating aftertreatment. These remote areas have the same challenges as areas not on the FAHS, and complying with the current rule would similarly be prohibitively costly and potentially infeasible. In addition to area sources located in areas of Alaska that are not accessible by the FAHS being defined as remote and subject to management practices, the EPA also proposes that any stationary RICE in Alaska meeting all of the following conditions be subject to management practices:

(1) The only connection to the FAHS is through the Alaska Marine Highway System (AMHS), or the stationary RICE operation is within an isolated grid in Alaska that is not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid,

(2) At least 10 percent of the power generated by the stationary RICE on an annual basis is used for residential purposes, and

(3) The generating capacity of the area source is less than 12 megawatts, or the stationary RICE is used exclusively for backup power for renewable energy and is used less than 500 hrs per year on a 10-year rolling average.

3. Costs and Benefits

These proposed amendments would reduce the capital and annual costs of the original 2010 amendments by $287 million and $139 million, respectively. The EPA estimates that with the proposed amendments, the capital cost of the rule is $840 million and the annual cost is $490 million ($2010).

These proposed amendments would also result in decreases to the emissions reductions estimated in 2013 from the original 2010 RICE NESHAP amendments. The estimated reductions in 2013 from the 2010 RICE NESHAP rulemaking with these proposed amendments are 2,800 tons per year (tpy) of HAP, 36,000 tpy of carbon monoxide (CO), 2,800 tpy of particulate matter (PM), 9,600 tpy of nitrogen oxide (NO_X), and 36,000 tpy of volatile organic compounds (VOC). The reductions that were estimated for the original 2010 RICE NESHAP amendments were 7,000 tpy of HAP, 124,000 tpy of CO, 2,800 tpy of PM, 96,000 tpy of NO_X, and 58,000 tpy of VOC.

The EPA estimates the monetized co-benefits in 2013 of the original 2010 RICE NESHAP amendments with these proposed amendments incorporated to be $830 million to $2,100 million (2010 dollars) at a 3-percent discount rate and $740 million to $1,800 million (2010 dollars) at a 7-percent discount rate. The benefits that were estimated for the original 2010 RICE NESHAP amendments were $1,500 million to $3,600 million (2010 dollars) at a 3-percent discount rate and $1,300 million to $3,200 million (2010 dollars) at a 7-percent discount rate.

B. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS [1]	Examples of regulated entities
Any industry using a stationary internal combustion engine as defined in the proposed amendments.	2211	Electric power generation, transmission, or distribution.
	622110	Medical and surgical hospitals.
	48621	Natural gas transmission.
	211111	Crude petroleum and natural gas production.
	211112	Natural gas liquids producers.
	92811	National security.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria of this proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Submitting CBI.* Do not submit this information to the 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 the 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. Send or deliver information identified as CBI to only the following address: Ms. Melanie King, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention

Docket ID No. EPA–HQ–OAR–2008–0708.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

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

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

(d) Describe any assumptions and provide any technical information and/or data that you used.

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

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

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

(h) Make sure to submit your comments by the comment period deadline identified.

Docket. The docket number for this proposed rule is Docket ID No. EPA–HQ–OAR–2008–0708.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will be posted on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, the EPA will post a copy of this proposed rule on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Summary of Proposed Amendments

This action proposes amendments to the NESHAP for RICE in 40 CFR part 63, subpart ZZZZ. This action also proposes amendments to the NSPS for stationary engines in 40 CFR part 60, subparts IIII and JJJJ. The NESHAP for stationary RICE to regulate emissions of HAP was developed in several stages. The EPA initially addressed stationary RICE greater than 500 HP located at major sources of HAP emissions in 2004 (69 FR 33473). The EPA addressed new stationary RICE less than or equal to 500 HP located at major sources and new stationary RICE located at area sources in 2008 (73 FR 3568). Most recently, requirements for existing stationary RICE less than or equal to 500 HP located at major sources and existing stationary RICE located at area sources were finalized in 2010 (75 FR 9648 and 75 FR 51570).

The EPA is proposing to address a number of issues that have been raised by different stakeholders through lawsuits, several petitions for reconsideration of the 2010 RICE NESHAP amendments, and other communications. The EPA is also proposing to revise 40 CFR part 60, subparts IIII and JJJJ for consistency with the RICE NESHAP and to make minor corrections and clarifications. The following sections present the issues that the EPA is addressing in this action, background information as to why these issues are causing concern among affected stakeholders, and how the EPA proposes to resolve the issues.

A. Total Hydrocarbon Compliance Demonstration Option

1. Background

Currently, SI 4SRB non-emergency engines greater than 500 HP located at major sources and existing SI 4SRB non-emergency engines greater than 500 HP located at area sources have the option of meeting either a formaldehyde percent reduction or a formaldehyde concentration standard. Formaldehyde was established in the original 2004 RICE NESHAP as an appropriate surrogate for HAP emissions from 4SRB engines based on industry test data available at that time. Based on testing of stationary lean burn engines conducted at Colorado State University (CSU), the EPA was able to establish CO as a surrogate for HAP for lean burn engines. Rich burn engines were not tested at CSU and the data the EPA had available at the time that were used to set the standards for rich burn engines did not support the same relationship between CO and HAP reductions for rich burn engines. Therefore, the EPA was unable to establish CO as a surrogate for HAP emissions for rich burn engines and the emission standard for rich burn engines was specified in terms of formaldehyde, the hazardous air pollutant emitted in the largest quantity from stationary engines.

The EPA has previously acknowledged that it is significantly more expensive and difficult to test for formaldehyde than for CO, but has been unable in the past to support the same flexibility for rich burn engines as is currently in the rule for lean burn engines with the option to meet the standards in terms of either formaldehyde or CO. For these reasons, and expecting that new data for rich burn engines may become available in the future for the EPA to review and reassess possible surrogates for HAP, the EPA requested comment on this issue when proposing NESHAP for stationary existing engines less than or equal to 500 HP at major sources and all stationary existing engines at area sources in 2009 (74 FR 9698). Specifically, the EPA solicited comment on whether it would be appropriate to include an alternative standard in terms of VOC and asked that commenters submit data supporting the relationship between HAP and VOC. Comments the EPA received back on the proposed rule asked that the formaldehyde standards for rich burn engines be replaced with emission standards for THC. The EPA determined at the time that it was not appropriate to adopt an alternative standard in terms of THC (or VOC) for rich burn engines and discussed the reasons why in the 2010 responses to comments.[2] Compliance with the formaldehyde standard in the rule is, therefore, currently demonstrated by initial and continuous performance testing for formaldehyde.

On October 19, 2010, engine manufacturer Dresser-Waukesha submitted a petition for reconsideration of the formaldehyde requirements. The EPA granted the petition for reconsideration on January 5, 2011. (In addition, on November 3, 2010, the Engine Manufacturers Association submitted a petition for judicial review of these requirements.) In the petition for reconsideration, Dresser-Waukesha argued that formaldehyde is difficult and costly to measure. The petition requested that the HAP surrogate for 4SRB engines should be THC rather than formaldehyde. Dresser-Waukesha submitted data from testing it conducted illustrating that THC reduction across the catalyst is an appropriate surrogate for HAP reduction across the catalyst.[3] According to the petitioner, testing for THC is easier and less costly and would substantially reduce the burden of the rule for owners and operators of these engines. Testing for formaldehyde emissions could cost more than double that of testing for THC emissions and on

[2] Memorandum from Melanie King, EPA Energy Strategies Group to EPA Docket EPA–HQ–OAR–2008–0708. Response to Public Comments on Proposed National Emission Standards for Hazardous Air Pollutants for Existing Stationary Reciprocating Internal Combustion Engines Located at Area Sources of Hazardous Air Pollutant Emissions or Have a Site Rating Less Than or Equal to 500 Brake HP Located at Major Sources of Hazardous Air Pollutant Emissions. August 10, 2010. EPA–HQ–OAR–2008–0708–0557.

[3] Letter from Dresser-Waukesha to Melanie King. Follow-up to November 18, 2010 Teleconference. December 6, 2010. EPA–HQ–OAR–2008–0708–0662.

a nationwide basis the EPA estimates that replacing formaldehyde testing with THC testing would result in substantial compliance cost savings annually while achieving the same reduction in HAP emissions.

The EPA has reviewed the data submitted by Dresser-Waukesha. The data provided indicate that a strong relationship exists between percentage reductions of THC and percentage reductions of formaldehyde (the surrogate for HAP emissions in the NESHAP) on rich burn engines using non-selective catalytic reduction (NSCR). Data analyzed by the EPA indicate that if the NSCR is reducing THC by at least 30 percent from 4SRB engines, formaldehyde emissions are guaranteed to be reduced by at least 76 percent, which is the percentage reduction required for the relevant engines. Indeed, the percentage reduction of formaldehyde is invariably well above the 76 percent level, and is usually above 90 percent. Therefore, the EPA agrees with the petitioner that for SI 4SRB engines using NSCR and meeting the NESHAP by showing a percentage reduction of HAP, it would be appropriate to allow sources to demonstrate compliance with the NESHAP by showing a THC reduction of at least 30 percent. Including an optional THC compliance demonstration option would reduce the cost of compliance significantly while continuing to achieve the same level of HAP emission reduction because the emission standards would remain the same. Consequently, the EPA is proposing amendments to allow owners and operators of certain stationary 4SRB engines (*i.e.,* the ones currently subject to a formaldehyde percent reduction requirement) to show compliance with an optional THC compliance demonstration option. The specific amendments the EPA is proposing are presented below.

2. Proposed Amendments

The EPA is proposing to add an alternative method of demonstrating compliance with the NESHAP for stationary 4SRB non-emergency engines greater than 500 HP that are located at major sources of HAP emissions and for existing stationary 4SRB non-emergency engines greater than 500 HP that are located at area sources of HAP emissions that choose to meet the formaldehyde percent reduction requirement of 76 percent or more.

Based on the arguments and evidence presented in the petition discussed above, the EPA is proposing to add a compliance demonstration option for stationary 4SRB engines meeting a 76 percent or more formaldehyde reduction. The compliance demonstration option would be an alternative to the existing method of demonstrating compliance with the formaldehyde percent reduction standard, which is to test engines for formaldehyde. The alternative for owners and operators of 4SRB engines meeting a 76 percent or more formaldehyde reduction would be to test their engines for THC showing that the engine is achieving at least a 30 percent reduction of THC emissions.

Under the proposed amendments, existing and new stationary 4SRB engines greater than 500 HP and located at major sources would still be required to reduce formaldehyde emissions by 76 percent or more or limit the concentration of formaldehyde in the stationary RICE exhaust to 350 parts per billion by volume, dry basis or less at 15 percent oxygen (O_2). However, owners and operators choosing to meet the formaldehyde concentration limit would not have the THC demonstration compliance option, because EPA could not verify a clear relationship between concentrations of THC and concentrations of formaldehyde in exhaust from these SI 4SRB engines. For the reasons discussed in section II.C.1 of this preamble, the EPA is proposing that existing stationary 4SRB non-emergency engines greater than 500 HP located at area sources located in populated areas be subject to an equipment standard and required to install a catalyst. These engines would be subject to testing to demonstrate initially and on an ongoing basis that the catalyst is reducing CO by 75 percent or more, or alternatively that THC emissions are being reduced by 30 percent or more.

Owners and operators of existing stationary 4SRB engines less than or equal to 500 HP who are required to limit the concentration of formaldehyde in the stationary RICE exhaust to 10.3 parts per million by volume, dry basis (ppmvd) or less at 15 percent O_2 do not have the option to demonstrate compliance using THC and must continue to demonstrate compliance by testing for formaldehyde following the methods and procedures specified in the rule.

Owners and operators opting to use the THC compliance demonstration method must demonstrate compliance by showing that the average reduction of THC is equal to or greater than 30 percent. Owners and operators of 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions and demonstrating compliance by using the THC compliance demonstration option must conduct performance testing using Method 25A of 40 CFR part 60, appendix A—Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer. Measurements of THC at the inlet and the outlet of the NSCR must be on a dry basis and corrected to 15 percent O_2 or equivalent carbon dioxide content. To correct to 15 percent O_2, dry basis, owners and operators must measure oxygen using Method 3, 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00 (2005) and measure moisture using Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03. Because owners and operators are complying with a percent reduction requirement, the method used must be suitable for the entire range of emissions since pre and post-catalyst emissions must be measured. Method 25A is capable of measuring emissions down to 5 ppmv and is, therefore, an appropriate method for measuring THC emissions for compliance demonstration purposes. The EPA is allowing sources the option to meet a minimum THC percent reduction of 30 percent by using Method 25A of 40 CFR part 60, appendix A to demonstrate compliance with the formaldehyde percent reduction in 40 CFR part 63, subpart ZZZZ.

B. Emergency Demand Response/Peak Shaving

1. Background

This action also proposes to amend provisions in the RICE NESHAP that currently allow owners and operators to operate stationary emergency engines for up to 15 hours per year as part of a demand response program if the RTO or equivalent balancing authority and transmission operator have determined there are emergency conditions that could lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level. The final rule did not allow emergency engines to be used for purposes of peak shaving or other non-emergency purposes as part of a financial arrangement. These provisions were included in the RICE NESHAP when requirements for existing stationary CI engines were finalized on March 3, 2010 (75 FR 9648). Following the completion of that portion of the rule, the EPA received three main petitions for reconsideration. One petition was from CPower, Inc., EnergyConnect, Inc., EnerNOC, Inc., and Innoventive Power, LLC. (EnerNOC et al.)(EPA–HQ–OAR–2008–0708–0404).

Another petition was received from the Delaware Department of Natural Resources and Environmental Control (DE DNREC) (EPA–HQ–OAR–2008–0708–0400). The third petition was from the National Rural Electric Cooperative Association (NRECA) (OAR–2008–0708–0580). In addition to these main petitions the EPA received a substantial number of letters from others in the electric generation industry.

The petition from EnerNOC, et al., asked that EPA increase the period of time permitted for emergency demand response operation in the rule to 60 hours per year, or the minimum number of hours required by the emergency demand response program. By contrast, the DE DNREC petition asked EPA to reconsider the emergency demand response provision because of the adverse effects that it believes would result from increased emissions from these engines. The petition from NRECA requested that the EPA eliminate the restriction on the use of stationary emergency engines for demand response purposes. The EPA granted the petitions from EnerNOC, et al., DE DNREC and NRECA, and issued a notice on December 7, 2010 (75 FR 75937), requesting comments on whether to amend the 15 hours per year limitation on the operation of stationary emergency RICE participating in emergency demand response programs.

The EPA received more than 120 comments from a number of different entities including various state agencies, utilities, electric cooperatives and industry organizations. Many commenters expressed that 15 hours per year is not sufficient to meet current emergency demand response requirements for participation. For example, several emergency demand response programs have ISO tariff requirements greater than 15 hours per year, including the Electric Reliability Council of Texas emergency demand response program, which has a tariff requirement of 24 hours per year; the Pennsylvania Jersey Maryland (''PJM'') Interconnection, known as the Emergency Load Response Program, which has a tariff requirement of 60 hours per year; and the ISO New England (''ISO–NE''), which forecasts that backup resources would be expected for 55 hours over a 12-month period. Tariff requirements are developed to specify the mandatory time load resources (engines) must be willing and able to operate if the units are enrolled in the program. Conversely, some commenters urged the EPA to allow stationary emergency engines to only operate during true emergencies or when voltage or frequency varies beyond specified parameters.

Based on the EPA's review of the petitions and comments that the EPA has received, the EPA has found it appropriate to propose to amend the current rule to increase the allowance for stationary emergency engine participation in emergency demand response programs to up to 100 hours per year, which would be included as part of the pre-existing allowance of 100 hours for owners of emergency engines to test and maintain their emergency engines. The EPA believes that the emergency demand response programs that exist across the country are important programs that protect the reliability and stability of the national electric service grid. Allowing stationary emergency engines to operate as part of emergency demand response programs can help prevent grid failure or blackouts, by allowing these engines to be used in circumstances of grid instability prior to the occurrence of blackouts. Preventing stationary emergency engines from being able to qualify and participate in emergency demand response programs without having to apply aftertreatment could force owners and operators to leave their engines out of these programs, which will impair the ability of ISOs and RTOs to use these relatively small, quick-starting and reliable sources of energy to protect the reliability of their systems. The EPA does not wish to potentially jeopardize electrical reliability or create a disincentive for stationary emergency engines to participate in these programs. The circumstances during which the EPA would allow stationary emergency engines to operate for emergency demand response purposes include periods during which the regional transmission authority or equivalent balancing authority and transmission operator has declared an Energy Emergency Alert Level 2 (EEA Level 2) as defined in the North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergency, plus during periods where there is a deviation of voltage or frequency of 5 percent or more below standard voltage or frequency. During EEA Level 2 alerts there is insufficient energy supply and a true potential for electrical blackouts. System operators must call on all available resources during EEA Level 2 alerts in order to stabilize the grid to prevent failure. Therefore, this situation is a good indicator of severe instability on the system. Consistent normal voltage provided by the utility is often called power quality and is an important factor in local electric system reliability. Reliability of the system requires electricity being provided at a normal expected voltage. The American National Standards Institute standard C84.1–1989 defines the maximum allowable voltage sag at below 5 percent. On the local distribution level local voltage levels are therefore important and a 5 percent or more change in the normal voltage or frequency is substantial and an indication that additional resources are needed to ensure local distribution system reliability. This situation would be indicative of severe instability on the system. The EPA has revised the language identifying the emergency conditions that currently appears at 40 CFR 63.6640(f) because that language is not as specific as the newly proposed language. The EPA believes that the newly proposed language, along with the preexisting language in the definition of emergency engine describing non-demand response emergency situations, will address all emergency events, including all those that would be recognized solely by the local system operators, such as local weather events. The EPA requests comments on the scope of the new language.

Emergency demand response programs rely on agreements under which owners of engine agree to make their engines available to be called upon for a specific number of hours per year, as required by the relevant ISO or RTO tariff, under specified circumstances considered to indicate emergencies. In order to be enrolled in an emergency demand response program, participants must qualify their engines and must be able to use their emergency engines for the number of hours the program requires. Engines are not generally called upon for the maximum hours required by the tariffs. However, even though the engine may not be called at all or may run for fewer hours than the program requires it to be available in a particular year, the engine must still be available for those theoretical number of hours in order to join the program. Demand response contracts require more hours than the 15 hours per year that is currently in the regulations, and the commenters state that the 15 hours per year is not a sufficient amount of time to ensure the reliability of the program; some programs require up to 60 hours per year, as discussed earlier in this preamble. For these reasons, the EPA believes it is appropriate to allow additional hours for emergency demand response operation in order for such

programs to be accessible to stationary emergency engines. Consequently, the EPA is proposing amendments to the rule to increase the limitation on emergency demand response operation to 100 hours per year for stationary emergency engines. It is expected that owners and operators of stationary emergency engines that seek to qualify their units as demand resources would with the proposed increase to 100 hours per year be able to meet the operational and qualification requirements of the different ISOs and RTOs in the country.

As stated, stationary emergency engines that participate in demand response programs may not be called upon at all, but must nonetheless be available to operate for the required amount stipulated by the specific program. The purpose of the limited allowance for emergency demand response is to respond to emergencies, and the EPA is persuaded by the information that has been submitted that 15 hours per year is an insufficient amount of time to allow for emergency demand response needs, given past experience. The EPA believes 100 hours per year is sufficient to cover any potential demand response operation as well as the required maintenance and testing that is also included within the 100 hours of operation.

The EPA has previously determined that stationary emergency engines typically operate well below 50 hours per year and more commonly about 1 to 2 hours per month. A survey conducted by the California Air Resources Board (CARB) indicated the average yearly operation for emergency diesel engines was 31 hours over a period of 3 years. The majority of those hours were for the purpose of maintenance and testing; less than 5 hours was for interruptible service contracts, and the remaining amount for emergency/standby operation (EPA–HQ–OAR–2005–0029–0011). Data from demand response programs in ISO–NE and PJM territories show that backup generation was dispatched for less than 30 hours during the summers of 2008, 2009 and 2010.[4]

However, again, emergency units must be available to operate more than that in most cases to qualify for demand response programs. For instance, PJM requires a minimum ISO tariff of 60 hours per year of engine availability for program participation. Consequently, in order to ensure that a sufficient amount of operating time is available for maintenance and readiness testing, and for demand response operation, the EPA is proposing 100 hours of operation. A number of commenters requested that an allowance of 100 hours per year be allowed in order to provide adequate hours consistent with minimum required hours that customers must be available to operate and to address local distribution system emergencies. For instance, in Hawaii, the emergency demand response program operated by the Hawaiian Electric Company requires that emergency engines be able to operate for 100 hours per year in the event of an emergency in order to participate in the program. In order to provide a sufficient amount of time to cover annual maintenance and testing, which is typically more than 20 hours per year according to the survey conducted by CARB (see EPA–HQ–OAR–2005–0029–0011), plus to cover hours necessary for qualifying for emergency demand response programs or local distribution system emergencies, EPA believes an allowance of 100 hours per year would be appropriate for these activities. Taking into account that there may be situations where annual maintenance and testing could exceed the typical 1 to 2 hours per month and accounting for other emergency demand response programs that require more than 60 hours per year for program participation (*e.g.,* the Hawaiian Electric Company), the EPA believes that 100 hours per year is appropriate for emergency demand response plus maintenance and testing.

The proposed amendment to the rule would mean that stationary emergency engines could operate for a total of 100 hours per year for emergency demand response operation as part of the 100 hours already permitted for maintenance and readiness testing while maintaining their status as emergency units, rather than non-emergency units, and continue to meet the requirements that apply to emergency engines.

On the issue of peak shaving and non-emergency demand response, the EPA is proposing to include a temporary limited allowance for peak shaving and other types of non-emergency use as part of a financial arrangement for existing stationary emergency engines at area sources of HAP, if the peak shaving is done as part of a peak shaving (or load management) program with the local distribution system operator. The power generated under this allowance can only be used at the facility or towards the local system.

The EPA has determined that it is appropriate to include the option for existing stationary emergency engines at area sources to operate for a small number (50) of hours per year for any non-emergency reason and not be penalized or considered a non-emergency engine and subsequently required to install aftertreatment that could be prohibitively costly for these sources in the near term. The EPA is proposing that the 50-hour allowance for peak shaving for emergency engines at area sources be allowed for a limited period of time, but then removed after April 16, 2017. The peak shaving would also be limited to operation as part of a peak shaving (load management program) with the local distribution system operator. Owners would still have the pre-existing 50 hours per year allowance for non-emergency operation after April 16, 2017, but those 50 hours could no longer be used for peak shaving. The temporary allowance for peak shaving would give sources an additional resource for maintaining reliability while facilities are coming into compliance with the NESHAP From Coal and Oil-Fired Electric Utility Steam Generating Units (77 FR 9304). While the EPA does not expect the NESHAP From Coal and Oil-Fired Electric Utility Steam Generating Units to cause regional reliability problems, this limited allowance would allow the owners and operators of these engines more flexibility to run reliability critical units in order to minimize potential grid-related interruptions as coal- and oil-fired baseload power plants may be temporarily shut down to install emission controls to comply with the NESHAP From Coal and Oil-Fired Electric Utility Steam Generating Units.

Including this allowance is important for small electric cooperatives and other entities located at area sources that use these engines to maintain voltage and electric reliability. Many rural electric cooperatives enter agreements with owners of small emergency engines and rely on the engines to reduce demand on the central power supply during periods of high demand, which reduces the cost of power during periods of high demand for the members of the cooperative. Commenters promoting the continued use of peak shaving programs said that maintaining the cost of power as low as possible is important across the country, but is particularly of significant importance to rural electric cooperatives that, according to the commenter, service customers in the most economically depressed areas of the country, where options are the most limited. The commenters argued that if small emergency engines would no longer be permitted to operate for peak shaving purposes without having to be reclassified as non-emergency engines

[4] Memorandum from Stacy Angel, Synapse Energy Economics, Inc. to Doug Hurley, Synapse Energy Economics. Sample Revenue for a 1 MW Backup Generation Unit. June 27, 2011.

and subsequently subject to costly emissions controls, owners could no longer afford to participate in such programs. Cooperatives argued that this would lead to increased costs that would ultimately be passed along to the customers. Commenters also maintained that keeping peak shaving programs would not lead to additional public health risks or emissions because the operation for peak shaving is minimal. If peak shaving is not allowed under the rule, commenters said that this would lead to an increase in central power station capacity and possibly more transmission and distribution line capacity to accommodate the increase in demand resulting from eliminating small emergency engines from being used. This could lead to a larger impact on the environment and public health than allowing a small number of hours for peak shaving purposes. Certain small and remote facilities also rely on financial programs to generate additional income in order to maintain their engines and stay in operation. The additional funds can be essential for many smaller facilities and operations. Providing a limited allowance for peak shaving and non-emergency demand response could generate sufficient income to prevent small facilities and owners from ceasing operation where these engines are in service. In order to further limit the operation of these engines to small, remote facilities, the EPA is proposing that the power generated under this allowance can only be used at the facility or towards the local system. In addition, while the EPA is proposing this allowance until the end of April 16, 2017, the EPA does not believe it is appropriate to continue the program beyond that time. Generators receive considerable compensation for their availability in peak shaving programs and the EPA believes that it is not appropriate to allow these engines to continue receiving compensation for this non-emergency use beyond 2017 without having to reduce their emissions. The generators must by that time decide whether to restrict their use to emergency or limited non-compensated non-emergency use or to reduce the emissions from their engines. The EPA also encourages engine owners and operators, as well as larger system planners, to consider the use of alternative peak shaving options, such as load curtailments, lower emitting distributed generation, combined heat and power, and reduced line losses on the electricity grid.

The previous estimate of emissions from stationary emergency engines is not expected to change due to this proposed limited allowance. To estimate emissions from stationary emergency engines, the EPA has previously estimated that emergency engines would on average operate for 50 hours per year. There is a wide range in how much these engines operate (some well below 50 hours per year), but on average and to be conservative, the EPA believes that 50 hours per year is still representative and consequently the environmental impact the EPA has calculated previously remains appropriate. In consideration of all these issues, the EPA is proposing amendments to the rule to provide a limited allowance for peak shaving for existing stationary emergency engines at area sources of HAP. The specific amendments the EPA is proposing are discussed below.

2. Proposed Amendments

a. Emergency Demand Response. Based on the discussion in section II.B.1 of this preamble, the EPA is proposing to revise the current provisions for stationary engines used for emergency demand response operation. The provisions the EPA is proposing to amend are in §§ 63.6640(f) and 63.6675 of 40 CFR part 63, subpart ZZZZ. Currently, § 63.6640(f)(1)(iii) allows a maximum of 15 hours per year to be spent towards demand response operation under certain qualifying conditions. Also, § 63.6640(f)(1)(ii) currently includes an allowance of 100 hours per year for purposes of maintenance checks and readiness testing. The EPA is proposing that owners and operators of stationary emergency RICE be permitted to operate their engines as part of an emergency demand response program within the 100 hours per year that is permitted for maintenance and testing in § 63.6640(f)(1)(ii). Owners and operators of stationary emergency engines can operate for emergency demand response during periods in which the regional transmission authority or equivalent balancing authority and transmission operator has declared an EEA Level 2 as defined in the North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergency and during periods where there is a deviation of voltage or frequency of 5 percent or greater below standard voltage or frequency. The hours spent for emergency demand response operation are added to the hours spent for maintenance and testing purposes and counted towards the 100 hours per year. If the total time spent for demand response operation and maintenance and testing exceeds 100 hours per year the engine will not be considered an emergency engine under this subpart and will need to meet all requirements for non-emergency engines. The EPA is recognizing that these engines may be called to operate not only by the regional transmission operator or equivalent to maintain the reliability of the bulk power system, but also by the local transmission and distribution system operators to support the local power systems.

For stationary emergency engines above 500 HP that were installed prior to June 12, 2006, there is currently no emergency demand response allowance and there is no time limit on the use of emergency engines for routine testing and maintenance in § 63.6640(f)(2)(ii). Those engines were not the focus of the 2010 RICE NESHAP amendments; therefore, the EPA did not make any changes to the requirements for those engines as part of the 2010 amendments. For consistency, the EPA is now also proposing that owners and operators of stationary emergency engines installed prior to June 12, 2006, be permitted to operate their engines as part of a demand response program as well for a total of 100 hours per year, including time spent for maintenance and testing.

The EPA is also proposing to amend the NSPS for stationary CI and SI engines in 40 CFR part 60, subparts IIII and JJJJ, respectively, to provide the same allowance for stationary emergency engines for emergency demand response operation as for engines subject to the RICE NESHAP. The NSPS regulations currently do not include such an allowance for emergency demand response operation. For the reasons discussed in section II.B of this preamble as to why the EPA finds it appropriate to allow stationary emergency engines to participate in emergency demand response programs and remain being considered emergency units, and for consistency across engine regulations, the EPA is proposing to add an emergency demand response allowance under the NSPS regulations. Consequently, the EPA is proposing to revise the existing language in §§ 60.4211(f) and 60.4219 of 40 CFR part 60, subpart IIII, and §§ 60.4243(d) and 60.4248 of 40 CFR part 60, subpart JJJJ, to specify that emergency engines may participate in demand response programs for up to 100 hours per year, including hours spent towards maintenance and testing of the emergency engines.

b. Peak Shaving and other Non-emergency Use as Part of a Financial Arrangement. In addition to the changes the EPA is proposing related to emergency demand response operation, the EPA is also including a further

provision for owners and operators of existing stationary emergency RICE located at area sources for the reasons discussed in section II.B.1 of this preamble. Paragraph § 63.6640(f) currently allows owners and operators of emergency stationary RICE to operate their engine for 50 hours per year in non-emergency situations. As currently written, the 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity; except that owners and operators of certain emergency engines may operate the engine for a maximum of 15 hours per year as part of an emergency demand response program. As discussed, the 15 hours per year allowance for emergency engines to participate in emergency demand response programs is being increased to 100 hours per year, but will also include hours spent towards maintaining and conducting readiness testing of the emergency engines. However, additionally, the EPA is also proposing that stationary emergency engines located at area sources be permitted to apply the 50 hours per year that is currently allowed under § 63.6640(f) for non-emergency operation towards any non-emergency operation, including operation as part of a financial agreement with another entity. The peak shaving allowance would expire in 2017. The EPA is specifying that the power can only be used at the facility or towards the local system, and the engine can only be operated for peak shaving as part of a program with the local distribution system operator. The EPA is also clarifying that an engine that exceeds the calendar year limitations on non-emergency operation, including emergency demand response or peak shaving, will be considered a non-emergency engine and subject to the requirements for non-emergency engines for the remaining life of the engine.

C. Non-Emergency Stationary SI RICE Greater Than 500 HP Located at Area Sources

1. Background

The EPA is also proposing to amend the requirements that apply to existing stationary non-emergency 4 stroke SI RICE greater than 500 HP located at area sources of HAP emissions, which are generally natural gas fired engines. Currently, the RICE NESHAP requires owners and operators of such engines to (1) either meet a CO concentration limit of 47 parts ppmvd at 15 percent O_2 or reduce emissions of CO by 93 percent or more, if the engines are 4SLB; and (2) to meet a formaldehyde concentration limit of 2.7 ppmvd at 15 percent O_2 or reduce formaldehyde emissions by 76 percent or more, if the engines are 4SRB. In both cases, the EPA expects that the standards would be met using aftertreatment; oxidation catalysts for 4SLB engines and NSCR for 4SRB engines. In addition to these emission requirements, owners and operators of existing stationary 4-stroke engines greater than 500 HP at area sources are also subject to monitoring, testing, recordkeeping and reporting requirements.

After the final requirements for existing stationary SI engines greater than 500 HP at area sources were published on August 20, 2010 (75 FR 51570), the EPA received petitions from Exterran (EPA–HQ–OAR–2008–0708–0581), the American Petroleum Institute (EPA–HQ–OAR–2008–0708–0582), the Interstate Natural Gas Association of America (EPA–HQ–OAR–2008–0708–0584), and the Gas Processors Association (EPA–HQ–OAR–2008–0708–0587) requesting that the EPA reconsider the requirements of the final rule. The petitioners expressed many similar concerns. As relevant to this rulemaking, petitioners stated that the EPA did not take into account the difference in population density and subsequently did not consider the difference in health impacts in remote versus more heavily populated locations. In the petitioners' opinion, there should be less concern about engines that are located farther away from people; the petitioners believed that the EPA has substantial latitude in requiring less stringent standards for owners and operators of stationary engines in remote areas.

While the EPA does not share all of the views of the petitioners regarding the difference between engines based on their location, the EPA does believe that it is reasonable to create a subcategory of existing stationary SI 4SLB and 4SRB engines above 500 HP located in areas remote from human activity. Engines located in remote areas that are not close to significant human activity may be difficult to access, may not have electricity or communications, and may be unmanned most of the time. The costs of the emission controls, testing, and continuous monitoring requirements may be unreasonable when compared to the HAP emission reductions that would be achieved, considering that the engines are in sparsely populated areas. The EPA believes that establishing a subcategory for SI engines at area sources of HAP located in sparsely populated areas accomplishes the agency's goals and is adequate in protecting public health.

The EPA is proposing to subcategorize sparsely populated engines using criteria based on the existing DOT classification system for natural gas pipelines. This system classifies locations based on their distance to natural gas pipelines covered by the Pipeline and Hazardous Materials Safety Administration safety regulations. The DOT system defines a class location unit as an onshore area that extends 220 yards or 200 meters on either side of the centerline of any continuous 1-mile (1.6 kilometers) length of natural gas pipeline. The DOT approach further classifies pipeline locations into Class 1 through Class 4 locations based on the number of buildings intended for human occupancy. A Class 1 location is defined as an offshore area or any class location unit that has 10 or fewer buildings intended for human occupancy. The DOT classification system also has special provisions for locations that lie within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. To be considered remote under this proposal, a source could not fall under this special provision and, in addition, must be in a Class 1 location. The EPA requests comment on whether engines located in class location units where buildings with four or more stories above ground are prevalent (Class 4 areas under the DOT classification system) should also specifically not be considered remote.

Stakeholders from the oil and gas industry have indicated to the EPA that the DOT system is well-established and there would be substantial overlap between engines on natural gas pipelines affected by the rule and covered by the DOT pipeline classification system. Incorporating this approach would also create harmonization between the EPA and DOT and would reduce the implementation and enforcement burden for states. Implementation for affected sources would also be less burdensome because the system is already in place and used by the natural gas pipeline industry and covers the majority of these engines. Stakeholders have indicated they are required to review the class location status of natural gas pipeline segments annually. The EPA believes this approach is reasonable for defining the subcategory

of remote engines for those engines that are associated with natural gas pipelines. For those engines not associated with pipelines, the EPA is using similar criteria. An engine would be considered to be in sparsely populated areas if within 0.25 mile radius of the engine there are 5 or fewer buildings intended for human occupancy. EPA requests comment on whether, to be considered remote, an engine not associated with a natural gas pipeline should also need to be farther than 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period.

The EPA is proposing management practices as generally available control technologies for existing stationary SI 4SLB and 4SRB area source non-emergency engines located in sparsely populated areas. Given the remote location of the engines from human activity, the EPA believes that it is appropriate not to include requirements that would necessitate aftertreatment and extensive testing and monitoring. The EPA has previously estimated that the costs of oxidation catalyst for existing 4SLB and 4SRB engines above 500 HP at area sources are $310 and $150 million, for capital and annual costs, respectively. The capital and annual costs of the RICE NESHAP for existing 4SLB and 4SRB engines above 500 HP at area sources would be $30 million and $12 million, respectively, if these proposed amendments are incorporated into the rule. Creating a subcategory of these engines for the ones located in sparsely populated areas and not mandating emission controls would significantly reduce the cost of the rule for such engines.

For existing stationary SI 4SLB and 4SRB area source non-emergency engines that are located in populated areas, the EPA is proposing an equipment standard that requires the installation and operation of a catalyst that will have to be tested initially and annually to ensure that the catalyst is working properly and reducing emissions as required. In addition, these units will be required to have devices to shut down the engine if the catalyst is exposed to dangerous temperatures or have continuous monitoring equipment installed to record catalyst inlet temperatures. The EPA is proposing shorter test duration and less rigorous methods than currently required while still ensuring that HAP reductions remain at expected levels for these engines located in populated areas. The specific amendments the EPA is proposing are discussed below.

2. Proposed Amendments

Owners and operators of engines in sparsely populated areas would have to conduct a review of the surrounding area every 12 months to determine if the nearby population has changed. If the engine no longer meets the criteria for a sparsely populated area the owner and operator must within 1 year comply with the emission standards specified below for populated areas. The EPA requests comment on whether engines that are not associated with pipelines should be required to conduct the review less frequently than every 12 months.

Owners and operators of existing stationary 4SLB and 4SRB greater than 500 HP at area sources that are in sparsely populated areas as described above would be required to perform the following:

- Change oil and filter every 1,440 hours of operation or annually, whichever comes first;
- Inspect spark plugs every 1,440 hours of operation or annually, whichever comes first, and replace as necessary; and
- Inspect all hoses and belts every 1,440 hours of operation or annually, whichever comes first, and replace as necessary.

Sources have the option to use an oil analysis program as described in § 63.6625(i) of the rule in order to extend the specified oil change requirement. The oil analysis must be performed at the same frequency specified for changing the oil in Table 2d of the rule. The analysis program must at a minimum analyze the following three parameters: Total Acid Number, viscosity, and percent water content. The condemning limits for these parameters are as follows: Total Acid Number increases by more than 3.0 milligrams of potassium hydroxide per gram from Total Acid Number of the oil when new; viscosity of the oil has changed by more than 20 percent from the viscosity of the oil when new; or percent water content (by volume) is greater than 0.5. If all of these condemning limits are not exceeded, the engine owner or operator is not required to change the oil. If any of the limits are exceeded, the engine owner or operator must change the oil within 2 days of receiving the results of the analysis; if the engine is not in operation when the results of the analysis are received, the engine owner or operator must change the oil within 2 days or before commencing operation, whichever is later. The owner or operator must keep records of the parameters that are analyzed as part of the program, the results of the analysis, and the oil changes for the engine. The analysis program must be part of the maintenance plan for the engine.

Owners and operators of existing stationary 4SLB and 4SRB area source engines above 500 HP in sparsely populated areas would also have to operate and maintain the stationary RICE and aftertreatment control device (if any) according to the manufacturer's emission-related written instructions or develop their own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions.

For engines in populated areas, *i.e.,* existing stationary 4SLB and 4SRB non-emergency engines greater than 500 HP at area sources that are located on DOT Class 2 through Class 4 pipeline segments or, for engines not associated with pipelines, that do not meet the 0.25 mile radius with 5 or less buildings criteria, the EPA is proposing to adopt an equipment standard requiring the installation of a catalyst to reduce HAP emissions. Owners and operators of existing area source 4SLB non-emergency engines greater than 500 HP in populated areas would be required to install an oxidation catalyst. Owners and operators of existing area source 4SRB non-emergency engines greater than 500 HP in populated areas would be required to install NSCR. Owners and operators must conduct an initial test to demonstrate that the engine achieves at least a 93 percent reduction in CO emissions or a CO concentration level of 47 ppmvd at 15 percent O_2, if the engine is a 4SLB engine. Similarly, owners and operators must conduct an initial performance test to demonstrate that the engine achieves at least a 75 percent CO reduction or a 30 percent THC reduction, if the engine is a 4SRB engine. The initial test must consist of three test runs. Each test run must be of at least 15 minute duration, except that each test run conducted using the proposed appendix A to 40 CFR part 63, subpart ZZZZ must consist of one measurement cycle as defined by the method and include at least 2 minutes of test data phase measurement. To measure CO, emission sources must use the CO methods already specified in subpart ZZZZ, or the proposed appendix A to 40 CFR part 63, subpart ZZZZ. The THC testing must be conducted using EPA Method 25A.

The owner or operator of both engine types must also use a high temperature shutdown device that detects if the catalyst inlet temperature is too high, or, alternatively, the owner or operator can monitor the catalyst inlet temperature continuously and maintain the temperature within the range specified in the rule. For 4SLB engines the catalyst inlet temperature must remain at or above 450 °F and at or below 1,350 °F. For 4SRB engines the temperature range must be greater than or equal to 750 °F and less than or equal to 1,250 °F at the catalyst inlet.

Owners and operators must in addition to the initial performance test conduct annual checks of the catalyst to ensure proper catalyst activity. The annual check of the catalyst must at a minimum consist of one 15-minute run using the methods discussed above, except that each test run conducted using the proposed appendix A to 40 CFR part 63, subpart ZZZZ must consist of one measurement cycle as defined by the method and include at least 2 minutes of test data phase measurement. Owners and operators of 4SLB engines must demonstrate during the catalyst activity test that the catalyst achieves at least a 93 percent reduction in CO emissions or that the engine exhaust CO emissions are no more than 47 ppmvd at 15 percent O_2. Owners and operators of 4SRB engines must demonstrate that their catalyst is reducing CO emissions by 75 percent or more, or alternatively, that THC emissions are being reduced by at least 30 percent during the catalyst activity check.

If the emissions from the engine do not exceed the levels required for the initial test or annual checks of the catalyst, then the catalyst is considered to be working properly. If the emissions exceed the specified pollutant levels in the rule, the exceedance(s) is/are not considered a violation, but the owner or operator would be required to shut down the engine and take appropriate corrective action (*e.g.,* repairs, clean or replace the catalyst, as appropriate). A follow-up test must be conducted within 7 days of the engine being started up again to demonstrate that the emission levels are being met. If the retest shows that the emissions continue to exceed the specified levels, the stationary RICE must again be shut down as soon as safely possible, and the engine may not operate, except for purposes of start-up and testing, until the owner/operator demonstrates through testing that the emissions do not exceed the levels specified.

D. Stationary Agricultural RICE in San Joaquin Valley

In the 2010 amendments to the RICE NESHAP, the EPA required existing non-emergency CI engines above 300 HP to meet a standard of either 70 percent reduction of CO emissions or 49 ppmvd CO, for engines between 300 and 500 HP, or 23 ppmvd CO for engines above 500 HP. The requirements also included testing and monitoring provisions. As with all requirements for existing engines in that rule, owners and operators were required to meet the requirements within 3 years of the effective date of the regulations (May 3, 2013).

Since the finalization of the rule for existing stationary CI engines, stakeholders from the agricultural industry in the San Joaquin Valley area of California have expressed concern regarding the effect of certain of these requirements on engines in the San Joaquin Valley. The San Joaquin Valley Air Pollution Control District (APCD) has indicated that there are 17 stationary CI engines at area sources in San Joaquin Valley certified to the Tier 3 standards in 40 CFR part 89 that were installed between January 1 and June 12, 2006. Under the NESHAP, stationary CI engines at area sources are existing if construction of the engine commenced prior to June 12, 2006. These 17 Tier 3 engines in the San Joaquin Valley, which were built to meet stringent emission standards, would not be able to comply with the applicable RICE NESHAP emission standards for existing engines without further testing and monitoring, and possible retrofit with further controls, due to differences in the emission standards and testing protocols in the RICE NESHAP versus the Tier 3 standards in 40 CFR part 89. However, an identical engine certified to the Tier 3 standards (or Tier 2 standards for engines above 560 kilowatts (kW)) in 40 CFR part 89 that was installed after June 12, 2006, would not have to be retrofit in order to comply with the NESHAP. Stationary CI engines installed after June 12, 2006, at area sources of HAP are required to comply with the NSPS for stationary CI engines, which requires engines to be certified to the standards in 40 CFR parts 89, 94, 1039, and 1042, as applicable. Thus, a 2006 model year stationary CI engine installed after June 12, 2006, that is certified to the applicable standards would meet the requirements of the NESHAP without further controls or testing. While the EPA does not know if other certified Tier 3 engines besides these 17 engines in the San Joaquin Valley were installed prior to June 12, 2006, EPA believes the same rationale should apply to any such engine.

The EPA believes that the Tier 3 standards (Tier 2 for engines above 560 kW) are technologically stringent regulations and believes it is unnecessary to require further regulation of engines meeting these standards. Engines meeting the Tier 3 standards typically employed emission control technologies such as combustion optimization and better fuel control to meet the Tier 3 standards. In order to address the concerns raised by the engine owners in the San Joaquin Valley, the EPA is proposing changes to amend the requirements for any certified Tier 3 (Tier 2 for engines above 560 kW) stationary CI engine located at an area source and installed before June 12, 2006. The EPA is proposing amendments to specify that any existing certified Tier 3 (Tier 2 for engines above 560 kW) CI engine that was installed before June 12, 2006, is in compliance with the NESHAP. This amendment would include any existing stationary Tier 3 (Tier 2 for engines above 560 kW) certified CI engine located at an area source of HAP emissions.

Another concern brought to the EPA's attention by the San Joaquin Valley agricultural industry is that due to state and local requirements in the San Joaquin Valley, many of the Tier 1 and Tier 2 stationary CI engines that are regulated as existing sources under the NESHAP must be replaced in the next few years, only a short time after the emission standards for existing engines must be met. Specifically, the San Joaquin Valley APCD rule for internal combustion engines (Rule 4702) requires Tier 1 and Tier 2 certified engines to meet Tier 4 standards by January 1, 2015, or 12 years after the installation date, but no later than June 1, 2018. The concern is that owners and operators of these engines would have to install aftertreatment by 2013 to meet the emission standards of the RICE NESHAP and then only a few years later be required to replace their engines per San Joaquin Valley APCD Rule 4702. The San Joaquin Valley APCD has identified 49 Tier 1 engines and 360 Tier 2 engines that are scheduled to be replaced under the local rule. The EPA has not identified any engines outside the San Joaquin Valley APCD area that are in the same or similar situation (*i.e.,* required to be replaced shortly after the compliance date for existing engines), but the EPA does not preclude the possibility that there are such engines in other areas, and requests comment and information on other areas that may have similar concerns.

The EPA does not think it is appropriate to require emission controls on a stationary CI engine that is going to be retired only a short time after the rule goes into effect. Stationary CI engines would have to comply with this rule by May 3, 2013, and owners of engines above 300 HP are expected to have to install aftertreatment on their engines in order to meet the emission standards. The EPA estimates that the one-time cost to equip a 500 HP stationary CI engine with the controls necessary to meet the emission standards under this rule is close to $14,000 and more than $3,000 on a yearly basis, not accounting for additional costs associated with monitoring, testing, recordkeeping and reporting. These engines (equipped with aftertreatment) could end up being in operation for less than 2 years or at most only 5 years before having to be replaced with a certified Tier 4 engine, as required by San Joaquin Valley District Rule 4702. It would not be reasonable to require the engine owner to invest in costly controls and monitoring equipment for an engine that will be replaced shortly after the installation of the controls.

Consequently, the EPA is proposing amendments to existing stationary CI engines located at area sources of HAP emissions to address this concern. The EPA is proposing to amend the requirements for existing stationary Tier 1 and Tier 2 certified CI engines located at area sources that are greater than 300 HP that are subject to a state or local rule that requires the engine to be replaced. The EPA is proposing to allow these engines to meet management practices from the applicable May 3, 2013, compliance date until January 1, 2015, or 12 years after installation date (whichever is later), but not later than June 1, 2018. This proposed change would provide owners enough time to replace their engines without mandating a possibly cost prohibitive requirement to change all of the engines in a short amount of time, while still requiring that replacement of the engine or a retrofit of the engine occur relatively quickly after the owner would have to comply with the NESHAP. The EPA is proposing that these engines be subject to management practices until January 1, 2015, or 12 years after installation date (whichever is later), but not later than June 1, 2018, after which time the CO emission standards discussed above (and that are in Table 2d of the rule) apply. The management practices include requirements for when to inspect and replace the engine oil and filter, air cleaner, hoses and belts. The complete details of which management practices are required are shown in Table 2d of the rule. Owners and operators of these existing stationary CI engines located at area sources of HAP emissions that intend to meet management practices rather than the emission limits prior to January 1, 2015, or 12 years after installation date, but not later than June 1, 2018, must submit a notification by March 3, 2013, stating that they intend to use this provision and identifying the state or local regulation that the engine is subject to.

E. Remote Areas of Alaska

1. Background

The RICE NESHAP currently specifies less stringent requirements for existing non-emergency CI engines at area sources located in remote areas of Alaska. Remote areas are defined as those not accessible by the FAHS. The FAHS includes areas with year-round ferry service that are not on the contiguous road system. Under the current regulation, stationary non-emergency CI engines at area sources in areas of Alaska that are not accessible by the FAHS are subject to management practices as opposed to numerical emission standards.

Following the publication of the final rule in 2010, the EPA received requests to expand the definition of remote areas of Alaska. Stakeholders asserted that facilities in areas that are accessible by the FAHS but are not connected to the Alaska Railbelt grid face the same challenges as those in areas not accessible by the FAHS. The Alaska Railbelt Grid refers to the service areas of the six regulated public utilities that extend from Fairbanks to Anchorage and the Kenai Peninsula. These utilities are the Golden Valley Electric Association, Chugach Electric Association, Matanuska Electric Association, Homer Electric Association, Anchorage Municipal Light & Power, and the City of Seward Electric System. According to the stakeholders, one reason for broadening the definition of remote areas in Alaska is high energy costs, which provide a natural incentive to run CI engines as little as possible. The cost of energy is utilities' greatest concern in Alaska. Also, the stakeholders indicated that extreme weather conditions in certain areas of Alaska is another reason for including additional areas in the definition of remote areas of Alaska. The climate issue is unique to remote areas of Alaska that experience some of the most extreme temperatures in the country. Heavy snowfall and high winds are not uncommon in several areas that are accessible by the FAHS. For instance, Copper Valley Electric Association (CVEA) is a utility accessible by the FAHS, but it includes areas that face the same challenges as other communities not accessible by the FAHS. The utility operates on an isolated grid and relies on diesel power generation. In one of CVEA's territories, Valdez, Alaska, CVEA indicated that this area experiences brutal conditions and stated that Valdez is considered to have the greatest snowfall (326 inches per winter) in any city of the United States. Also, winds at more than 100 miles per hour are not uncommon for Valdez, Alaska, according to CVEA. Temperatures between 40 and 50 below zero are also not abnormal, which emphasizes the extreme reliance on power, CVEA asserted. Travel times and accessibility are issues on a regular basis, but can be additionally exacerbated due to severe weather, which in some cases may lead to avalanches and road closings. In particular, even if a site is on the FAHS, in the event of poor weather conditions and road closings, there are in many cases no alternate roads to travel on. Further, access to specific isolated sites can also be problematic in particular remote areas of Alaska and the problems are unique to Alaska because of the infrastructure and environment. For example, communities made the case that sources along the AMHS that are only accessible by the AMHS should be treated the same way as communities not accessible by the FAHS. The AMHS primarily serves passengers and vehicles, and is not intended for transporting goods. Therefore, the same methods used to bring in goods to communities not on the FAHS are the same as those Alaskan villages served only by the AMHS. Goods are typically brought in to remote communities by barge and this is another example of a scenario that is unique to Alaska. Other arguments for expanding the definition of remote areas of Alaska beyond those not accessible by the FAHS include very low population density in many other remote areas although accessible by the FAHS, and the fact that many of these areas are not connected to the electric grid and rely on back up diesel generation to support fluctuating renewable energy systems. The energy supply system is another area that is particularly different in Alaska compared to the rest of the country where the majority of customers are connected to the grid. Therefore, for the reasons discussed, the EPA is proposing expansion of the remote area source category. This proposal is supported by the Alaska Department of

Environmental Conservation and communities with whom the EPA has discussed this issue.

2. Proposed Amendments

The EPA is proposing to expand the current definition of remote areas of Alaska to extend beyond areas that are not accessible by the FAHS. Specifically, the EPA is proposing that areas of Alaska that are accessible by the FAHS and that meet all of the following criteria are also considered remote and subject to management practices under the rule:

- The stationary CI engine is located in an area not connected to the Alaska Railbelt Grid,
- At least 10 percent of the power generated by the engine per year is used for residential purposes, and
- The system capacity is less than 12 megawatts, or the engine is used exclusively for backup power for renewable energy and is used less than 500 hours per year on a 10-year rolling average.

The EPA is proposing limiting the remote classification to engines that are used at least partially for residential purposes, where the impact of higher energy costs is of greatest concern. The classification is further limited to sources that are used infrequently as backup for renewable power, or that are at smaller capacity facilities, which are generally in more sparsely populated areas.

F. Miscellaneous Corrections and Revisions

The EPA is making some minor corrections to the stationary engine rules to address miscellaneous issues. The EPA is making some minor revisions in the rules to correct mistakes in the current rules or to clarify the rules. The revisions are as follows:

- Revising Tables 1b and 2b of 40 CFR part 63, subpart ZZZZ to correct language requiring the pressure drop to be at plus or minus 10 percent 100 percent load for all engines. The engines that were regulated in 2010 are not subject to the load requirements and therefore the EPA is correcting these tables to make this clear.
- Adding a footnote to Table 1b of 40 CFR part 63, subpart ZZZZ stating that sources can petition the Administrator for a different temperature range consistent with Table 2b of the rule.
- Correcting rows 8 and 10 in Table 2d of 40 CFR part 63, subpart ZZZZ to indicate that the requirements apply to non-emergency, non-black start stationary RICE greater than 500 HP that are 4SLB and 4SRB that operate more than 24 hours per year, as intended in the original rule.
- Revising the language in § 63.6625(b) of 40 CFR part 63, subpart ZZZZ that states ''* * * in paragraphs (b)(1) through (5) of this section'' to ''in paragraphs (b)(1) through (6) of this section.''
- Changing Tables 2c and 2d of 40 CFR part 63, subpart ZZZZ, where it currently specifies to inspect air cleaner, to also specify that it must be replaced as necessary.
- Revising § 63.6620(b) of 40 CFR part 63, subpart ZZZZ to indicate that testing must be conducted within plus or minus 10 percent of 100 percent load for stationary RICE greater than 500 HP located at a major source (except existing non-emergency CI stationary RICE greater than 500 HP located at a major source) that are subject to testing.
- Specifying that, as was intended in the rule adding these requirements, the operating limitations (pressure drop and catalyst inlet temperature) in Tables 1b and 2b of 40 CFR part 63, subpart ZZZZ do not have to be met during startup.
- For consistency, and as provided in the original RICE NESHAP for other stationary RICE, clarifying in 40 CFR part 63, subpart ZZZZ that the existing stationary RICE regulated in 2010 (*i.e.,* engines constructed before June 12, 2006 that are less than or equal to 500 HP located at major sources or engines located at area sources) must burn landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis in order to qualify as a landfill or digester gas engine under the rule.
- Clarifying § 60.4207(b) of 40 CFR part 60, subpart IIII to specify that owners and operators of stationary CI engines less than 30 liters per cylinder that are subject to the subpart that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(b), except owners and operators may use up any diesel fuel acquired prior to October 1, 2010, that does not meet the requirements of 40 CFR 80.510(b) for nonroad diesel fuel.
- Adding appendix A to 40 CFR part 63, subpart ZZZZ, which includes procedures that can be used for measuring CO emissions from existing stationary 4SLB and 4SRB stationary RICE above 500 HP located at area sources of HAP that are complying with the emission limits in Table 2d of 40 CFR part 63, subpart ZZZZ.
- Reinstating the footnotes for Table 2 of 40 CFR part 60, subpart JJJJ. The footnotes were inadvertently removed when the rule was amended on June 28, 2011 (76 FR 37954).
- Adding ''part 60'' in Table 4 of the NESHAP, in row 2 where it refers to 40 CFR appendix A.
- Clarifying in § 63.6625(a) of 40 CFR part 63, subpart ZZZZ that a continuous emission monitoring system is only required to be installed at the outlet of the control device for engines that are complying with the requirement to limit the concentration of CO.
- Clarifying that, as was intended in the rule adding these requirements, all of the standards for stationary SI RICE in § 60.4231(b) of 40 CFR part 60, subpart JJJJ are for stationary SI RICE that use gasoline.
- Clarifying that, as was intended in the rule adding these requirements, all of the standards for stationary SI RICE in § 60.4231(c) of 40 CFR part 60, subpart JJJJ are for stationary SI RICE that are rich burn engines that use LPG.
- Clarifying that, as was intended in the rule adding these requirements, all of the standards for stationary SI RICE in § 60.4231(d) of 40 CFR part 60, subpart JJJJ are for stationary SI RICE that are not gasoline engines or rich burn engines that use LPG.

G. Compliance Date

The EPA has received questions regarding whether the compliance dates for engines impacted by the 2010 amendments and this proposed reconsideration will be extended. Affected sources that may be impacted by this action have expressed concern about having sufficient time to comply with the rule by the compliance date, which is May 3, 2013, for existing stationary CI RICE and October 19, 2013, for existing stationary SI RICE. Sources impacted by this reconsideration are particularly concerned with compliance in the event that the EPA does not finalize changes that are substantially similar to the changes being proposed in this action. The EPA does not intend to extend the May 3, 2013, and October 19, 2013, compliance dates, because there are many engines that must meet those compliance dates that are not impacted by this reconsideration. However, the EPA notes that sources that are affected by the reconsideration and that may need additional time to install controls to comply with the applicable requirements can request up to an additional year to install controls, as specified in 40 CFR 63.6(i). The EPA requests comment regarding whether special consideration should be given to engines whose requirements would be reduced by this proposal if, in the final rule, the EPA does not finalize the proposed reduced requirements.

III. Summary of Environmental, Energy and Economic Impacts

A. What are the air quality impacts?

The EPA estimates that the rule with the proposed amendments incorporated will reduce emissions from existing stationary RICE as shown in Table 1 of this preamble. The emissions reductions the EPA previously estimated for the 2010 amendments to the RICE NESHAP are shown for comparison. Reductions are shown for the year 2013, which is the first year the final RICE NESHAP will be implemented for existing stationary RICE.

TABLE 1—SUMMARY OF REDUCTIONS FOR EXISTING STATIONARY RICE

Pollutant	Emission reductions (tpy) in the year 2013			
	2010 Final rule		2010 Final rule with these proposed amendments	
	CI	SI	CI	SI
HAP	1,014	6,008	1,005	1,778
CO	14,342	109,321	14,238	22,211
PM	2,844	N/A	2,818	N/A
NO_X	N/A	96,479	N/A	9,648
VOC	27,395	30,907	27,142	9,147

The EPA estimates that more than 900,000 stationary CI engines will be subject to the rule in total, but only a small number of stationary CI engines are affected by the proposed amendments in this action. It is estimated that approximately 330,000 stationary SI engines will be subject to the rule in total; however, only a subset of stationary SI engines are affected by the proposed amendments in this action. The decrease in estimated reductions for SI engines is primarily due to proposed amendments to the requirements for existing 4SRB and 4SLB SI engines larger than 500 HP at area sources of HAP that are in remote areas. Those engines were required by the 2010 rule to meet emission limits that were expected to require the installation of aftertreatment to reduce emissions; under these proposed amendments, those engines are required to meet management practices that would not require the installation of aftertreatment. Further information regarding the estimated reductions of this final rule can be found in the memorandum titled, ''RICE NESHAP Reconsideration Amendments—Cost and Environmental Impacts,'' which is available in the docket (EPA–HQ–OAR–2008–0708). The EPA did not estimate any reductions associated with the minor changes to the NSPS for stationary CI and SI engines.

B. What are the cost impacts?

The proposed amendments are expected to reduce the overall cost of the original 2010 RICE NESHAP amendments. The EPA estimates that with these proposed amendments incorporated the cost of the rule for existing stationary RICE will be as shown in Table 2 of this preamble. The costs the EPA previously estimated for the 2010 amendments to the RICE NESHAP are shown for comparison. The costs that were previously estimated are shown in the original year ($2008 for CI and $2009 for SI), as well as updated to 2010 dollars.

TABLE 2—SUMMARY OF COST IMPACTS FOR EXISTING STATIONARY RICE

Engine	2010 Final rule	2010 Final rule with these proposed amendments	
Total Annual Cost			
SI	$253 million ($2009)	$251 million ($2010)	$115 million ($2010).
CI	$373 million ($2008)	$375 million ($2010)	$373 million ($2010).
Total Capital Cost			
SI	$383 million ($2009)	$380 million ($2010)	$103 million ($2010).
CI	$744 million ($2008)	$748 million ($2010)	$740 million ($2010).

Further information regarding the estimated cost impacts of the proposed amendments, including the cost of the proposed amendments in 2010 dollars, can be found in the memorandum titled, ''RICE NESHAP Reconsideration Amendments—Cost and Environmental Impacts,'' which is available in the docket (EPA–HQ–OAR–2008–0708). The EPA did not estimate costs associated with the changes to the NSPS for stationary CI and SI engines. The changes to the NSPS are minor and are not expected to impact the costs of those rules.

C. What are the benefits?

Emission controls installed to meet the requirements of these rules will generate benefits by reducing emissions of HAP as well as criteria pollutants and their precursors, including CO, NO_X and VOC. NO_X and VOC are precursors to $PM_{2.5}$ (particles smaller than 2.5 microns) and ozone. The criteria pollutant benefits are considered co-benefits for these rules. For these rules, we were only able to quantify the health co-benefits associated with reduced exposure to $PM_{2.5}$ from emission reductions of NO_X and directly emitted $PM_{2.5}$.

The EPA previously estimated that the monetized co-benefits in 2013 of the stationary CI NESHAP would be $940 million to $2,300 million (2008 dollars) at a 3-percent discount rate and $850 million to $2,100 million (2008 dollars)

at a 7-percent discount rate.[5] For stationary SI engines, EPA previously estimated that the monetized co-benefits in 2013 would be $510 million to $1,200 million (2009 dollars) at a 3-percent discount rate) and $460 million to $1,100 million (2009 dollars) at a 7-percent discount rate.[6]

The proposed amendments are expected to reduce the overall emission reductions of the rules. In addition to revising the anticipated emission reductions, we have also updated the methodology used to calculate the co-benefits to be consistent with methods used in more recent rulemakings, which is summarized below and discussed in more detail in the Regulatory Impact Analysis (RIA). We estimate the monetized co-benefits of the proposed amendments of the CI NESHAP in 2013 to be $770 million to $1,900 million (2010 dollars) at a 3-percent discount rate and $690 million to $1,700 million (2010 dollars) at a 7-percent discount rate. For SI engines, we estimate the monetized co-benefits of the proposed amendments in 2013 to be $62 million to $150 million (2010 dollars) at a 3-percent discount rate and $55 million to $140 million (2010 dollars) at a 7-percent discount rate.

Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower co-benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[7] A summary of the monetized co-benefits estimates for CI and SI engines at discount rates of 3 percent and 7 percent is in Table 3 of this preamble.

TABLE 3—SUMMARY OF THE MONETIZED $PM_{2.5}$ CO-BENEFITS FOR PROPOSED AMENDMENTS TO THE NESHAP FOR STATIONARY CI AND SI ENGINES

[Millions of 2010 dollars] [a,b]

Pollutant	Emission reductions (tons per year)	Total monetized co-benefits (3 percent discount)	Total monetized co-benefits (7 percent discount)
Original 2010 Final Rules [c]			
Stationary CI Engines:			
Total Benefits	2,844 $PM_{2.5}$ 27,395 VOC	$950 to $2,300	$860 to $2,100.
Stationary SI Engines:			
Total Benefits	96,479 NO_X 30,907 VOC	$510 to $1,300	$470 to $1,100.
2010 Final Rules with these Proposed Amendments			
Stationary CI Engines:			
Directly emitted $PM_{2.5}$	2,818	$770 to $1,900	$690 to $1,700.
Stationary SI Engines:			
NO_X	9,648	$62 to $150	$55 to $140.

[a] All estimates are for the analysis year (2013) and are rounded to two significant figures so numbers may not sum across rows. The total monetized co-benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of $PM_{2.5}$ precursors, such as NO_X and directly emitted $PM_{2.5}$. It is important to note that the monetized co-benefits do not include reduced health effects from exposure to HAP, direct exposure to NO_2, exposure to ozone, ecosystem effects or visibility impairment.

[b] PM co-benefits are shown as a range from Pope, *et al.* (2002) to Laden, *et al.* (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type.

[c] The benefits analysis for the 2010 final rules applied out-dated benefit-per-ton estimates compared to the updated estimates described in this preamble and reflected monetized co-benefits for VOC emissions, which limits direct comparability with the monetized co-benefits estimated for these proposed rules. In addition, these estimates have been updated from their original currency years to 2010$, so the rounded estimates for the 2010 final rules may not match the original RIAs.

These co-benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ in 2013 from controls installed to reduce air pollutants in order to meet these rules. To estimate human health co-benefits of these rules, the EPA used benefit-per-ton factors to quantify the changes in $PM_{2.5}$-related health impacts and monetized benefits based on changes in directly emitted $PM_{2.5}$ and NO_X emissions. These benefit-per-ton factors were derived using the general approach and methodology laid out in Fann, Fulcher, and Hubbell (2009).[8] This approach uses a model to convert emissions of $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality, which are then divided by the emission reductions to create the benefit-per-ton estimates. However, for these rules, we utilized air quality modeling of emissions in the ''Non-EGU Point other'' category because we do not have modeling specifically for stationary engines.[9] [10]

[5] U.S. Environmental Protection Agency. 2010. *Regulatory Impact Analysis (RIA) for Existing Stationary Compression Ignition Engines NESHAP: Final Draft.* Research Triangle Park, NC. February. *http://www.epa.gov/ttn/ecas/regdata/RIAs/CIRICENESHAPRIA2-17-0cleanpublication.pdf.*

[6] U.S. Environmental Protection Agency. 2010. *Regulatory Impact Analysis (RIA) for Existing Stationary Spark Ignition (SI) RICE NESHAP: Final Report.* Research Triangle Park, NC. August. *http://www.epa.gov/ttn/ecas/regdata/RIAs/riceriafinal.pdf.*

[7] Roman, *et al.,* 2008. *Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S.,* Environ. Sci. Technol., 42, 7, 2268–2274.

[8] Fann, N., C.M. Fulcher, B.J. Hubbell. 2009. *The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution.* Air Qual Atmos Health (2009) 2:169–176.

[9] U.S. Environmental Protection Agency. 2012. *Technical support document: Estimating the benefit per ton of reducing $PM_{2.5}$ precursors from other point sources.* Research Triangle Park, NC.

[10] Stationary engines are included in the other non-EGU point source category. If the affected stationary engines are more rural than the average of the non-EGU sources modeled, then it is possible that the benefits may be somewhat less than we have estimated here. The TSD provides the geographic distribution of the air quality changes

The primary difference between the estimates used in this analysis and the estimates reported in Fann, Fulcher, and Hubbell (2009) is the air quality modeling data utilized. While the air quality data used in Fann, Fulcher, and Hubbell (2009) reflects broad pollutant/source category combinations, such as all non-EGU stationary point sources, the air quality modeling data used in this analysis has narrower sector categories. In addition, the updated air quality modeling data reflects more recent emissions data (2005 rather than 2001) and has a higher spatial resolution (12-km rather than 36-km grid cells). The benefits methodology, such as health endpoints assessed, risk estimates applied, and valuation techniques applied did not change. As a result, the benefit-per-ton estimates presented herein better reflect the geographic areas and populations likely to be affected by this sector. However, these updated estimates still have similar limitations as all national-average benefit-per-ton estimates in that they reflect the geographic distribution of the modeled emissions, which may not exactly match the emission reductions in this rulemaking, and they may not reflect local variability in population density, meteorology, exposure, baseline health incidence rates, or other local factors for any specific location.

We apply these national benefit-per-ton estimates calculated for this sector separately for directly emitted $PM_{2.5}$ and NO_X and multiply them by the corresponding emission reductions. The sector modeling does not provide estimates of the $PM_{2.5}$-related benefits associated with reducing VOC emissions, but these unquantified benefits are generally small compared to other $PM_{2.5}$ precursors. More information regarding the derivation of the benefit-per-ton estimates for this category is available in the technical support document, which is available in the docket.

These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type. The main $PM_{2.5}$ precursors affected by these rules are directly emitted $PM_{2.5}$ and NO_X. Even though we assume that all fine particles have equivalent health effects, the benefit-per-ton estimates vary between precursors depending on the location and magnitude of their impact on $PM_{2.5}$ levels, which drive population exposure. For example, directly emitted $PM_{2.5}$ has a lower benefit-per-ton estimate than direct $PM_{2.5}$ because it does not form as much $PM_{2.5}$; thus, the exposure would be lower, and the monetized health benefits would be lower.

It is important to note that the magnitude of the $PM_{2.5}$ co-benefits is largely driven by the concentration response function for premature mortality. Experts have advised the EPA to consider a variety of assumptions, including estimates based both on empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. We cite two key empirical studies, one based on the American Cancer Society cohort study [11] and the extended Six Cities cohort study.[12] In the RIA for this proposed amendments rule, which is available in the docket, we also include benefits estimates derived from the expert judgments and other assumptions.

The EPA strives to use the best available science to support our benefits analyses. We recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. After reviewing the scientific literature, we have determined that the no-threshold model is the most appropriate model for assessing the mortality benefits associated with reducing $PM_{2.5}$ exposure. Consistent with this finding, we have conformed the previous threshold sensitivity analysis to the current state of the PM science by incorporating a new ''Lowest Measured Level'' (LML) assessment in the RIA accompanying these rules. While an LML assessment provides some insight into the level of uncertainty in the estimated PM mortality benefits, the EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Most of the estimated PM-related co-benefits for these rules would accrue to populations exposed to higher levels of $PM_{2.5}$. For this analysis, policy-specific air quality data are not available due to time or resource limitations, and thus, we are unable to estimate the percentage of premature mortality associated with this specific rule's emission reductions at each $PM_{2.5}$ level. As a surrogate measure of mortality impacts, we provide the percentage of the population exposed at each $PM_{2.5}$ level using the source apportionment modeling used to calculate the benefit-per-ton estimates for this sector. Using the Pope, *et al.* (2002) study, 77 percent of the population is exposed to annual mean $PM_{2.5}$ levels at or above the LML of 7.5 micrograms per cubic meter ($\mu g/m^3$). Using the Laden, *et al.* (2006) study, 25 percent of the population is exposed above the LML of 10 $\mu g/m^3$. It is important to emphasize that we have high confidence in $PM_{2.5}$-related effects down to the lowest LML of the major cohort studies. This fact is important, because, as we model avoided premature deaths among populations exposed to levels of $PM_{2.5}$, we have lower confidence in levels below the LML for each study.

Every benefit analysis examining the potential effects of a change in environmental protection requirements is limited, to some extent, by data gaps, model capabilities (such as geographic coverage) and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Despite these uncertainties, we believe the benefit analysis for these rules provides a reasonable indication of the expected health benefits of the rulemaking under a set of reasonable assumptions. This analysis does not include the type of detailed uncertainty assessment found in the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) RIA because we lack the necessary air quality input and monitoring data to run the benefits model. In addition, we have not conducted air quality modeling for these rules, and using a benefit-per-ton approach adds another important source of uncertainty to the benefits estimates. The 2006 $PM_{2.5}$ NAAQS benefits analysis [13] provides an indication of the sensitivity of our results to various assumptions.

It should be noted that the monetized co-benefits estimates provided above do not include benefits from several important benefit categories, including exposure to HAP, NO_X, ozone exposure, as well as ecosystem effects and visibility impairment. Although we do

associated with this sector. It is important to emphasize that this modeling represents the best available information on the air quality impact on a per ton basis for these sources.

[11] Pope, *et al.,* 2002. *Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution.* Journal of the American Medical Association 287:1132–1141.

[12] Laden, *et al.,* 2006. *Reduction in Fine Particulate Air Pollution and Mortality.* American Journal of Respiratory and Critical Care Medicine 173:667–672.

[13] U.S. Environmental Protection Agency, 2006. *Proposed Amendments Regulatory Impact Analysis: $PM_{2.5}$ NAAQS.* Prepared by Office of Air and Radiation. October. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

not have sufficient information or modeling available to provide monetized estimates for these proposed amendments, we include a qualitative assessment of these unquantified benefits in the RIA for these proposed amendments.

For more information on the benefits analysis, please refer to the RIA for these proposed amendments, which is available in the docket.

D. What are the non-air health, environmental and energy impacts?

The EPA does not anticipate any significant non-air health, environmental or energy impacts as a result of these proposed amendments.

IV. Solicitation of Public Comments and Participation

The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposed rule from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow the EPA to make maximum use of the comments. The agency invites all parties to coordinate their data collection activities with the EPA to facilitate mutually beneficial and cost-effective data submissions. A redline/strikeout version of the complete NESHAP for stationary RICE, which shows the changes that are being proposed in this action, is available from the rulemaking docket.

The EPA is seeking specific comment on the proposal to temporarily allow stationary emergency engines located at area sources to apply the 50 hours per year that is currently allowed under § 63.6640(f) for non-emergency operation towards any type of non-emergency operation, including peak shaving and non-emergency demand response if the peak shaving is done as part of a peak shaving (load management) program with the local distribution system operator. The EPA is proposing that the allowance be removed after April 16, 2017.

The EPA recognizes that the electricity grid achieves demand response and grid stability with and without the use of emergency stationary RICE. Alternative approaches include reductions or shifts in energy use, electricity storage, distribution automation, microgrids, natural gas-fired combustion turbines, and grid-connected distributed generation, including non-emergency engines and combined heat and power. Many of these approaches can provide additional benefits, such as additional energy efficiency, lower costs, shorter electricity outage times, and better integration of renewable energy generation into the electricity grid. Several studies project a significant future potential for using less energy in homes, buildings, and industry during times of peak electricity demand. The EPA seeks comment on how these investments may affect the number of hours which emergency stationary RICE are needed in the future to address electricity peak shaving and grid stability.

The EPA is also specifically seeking comment on the proposed criteria for expanding the current definition of remote areas of Alaska beyond areas that are not accessible by the FAHS. The EPA requests comment on whether the proposed system capacity limitation of 12 megawatts and the alternative 500 hour cap on annual usage (based on a 10-year rolling average) are the appropriate criteria for distinguishing the areas of Alaska that, while accessible by the FAHS, have the same unique challenges as the areas that are not accessible by the FAHS.

The EPA is also seeking information related to irrigation pump engine sizes. During the 2010 rulemaking, the EPA relied upon several sources to determine the potential number of irrigation engines that may be impacted by the rule. Using these sources, the EPA estimated that the vast majority of the existing irrigation engines were less than or equal to 300 HP. The EPA received several comments confirming this estimation. The EPA seeks comprehensive, nationwide information on the size of existing irrigation engines to either confirm or refute our understanding of existing irrigation engine sizes; this information will assist EPA in assessing the impacts of the 2010 rule on existing irrigation engines. The EPA has placed information in the docket for this rulemaking (see EPA–HQ–OAR–2008–0708–0495) on the number of irrigation engines provided by the U.S. Department of Agriculture after the 2010 RICE NESHAP amendments were finalized.

V. Statutory and Executive Order Reviews

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

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 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. In addition, the EPA prepared a RIA of the potential costs and benefits associated with this action.

A summary of the monetized benefits, compliance costs and net benefits for the 2010 rule with the proposed amendments to the stationary CI engines NESHAP at discount rates of 3 percent and 7 percent is in Table 4 of this preamble. The summary for stationary SI engines is included in Table 5 of this preamble. OMB Circular A–4 recommends that analysis of a change in an existing regulatory program use a baseline that assumes ''no change'' in the existing regulation. For purposes of this rule, however, the EPA has decided that it is appropriate to assume a baseline in which the original 2010 rule did not exist. The EPA feels that this baseline is appropriate because full implementation of the final rule has not taken place as of yet (it will take place in 2013). In addition, this assumption is consistent with the baseline definition applied in the recently proposed NESHAP for Industrial, Commercial, and Institutional Boilers (76 FR 80532) and NSPS for Commercial/Industrial Solid Waste Incineration Units (76 FR 80452).

TABLE 4—SUMMARY OF THE MONETIZED BENEFITS, COMPLIANCE COSTS AND NET BENEFITS FOR THE 2010 RULE WITH THE PROPOSED AMENDMENTS TO THE STATIONARY CI ENGINE NESHAP IN 2013

[Millions of 2010 dollars] [a]

	3-Percent discount rate	7-Percent discount rate
Total monetized benefits [b]	$770 to $1,900	$690 to $1,700.
Total Compliance Costs [c]	$373	$373.

TABLE 4—SUMMARY OF THE MONETIZED BENEFITS, COMPLIANCE COSTS AND NET BENEFITS FOR THE 2010 RULE WITH THE PROPOSED AMENDMENTS TO THE STATIONARY CI ENGINE NESHAP IN 2013—Continued

[Millions of 2010 dollars] [a]

	3-Percent discount rate	7-Percent discount rate
Net Benefits	$400 to $1,500	$320 to $1,300.
Non-Monetized Benefits	Health effects from exposure to HAP. Health effects from direct exposure to NO_2 and ozone. Health effects from $PM_{2.5}$ exposure from VOC. Ecosystem effects. Visibility impairment.	

[a] All estimates are for the implementation year (2013) and are rounded to two significant figures.
[b] The total monetized co-benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of $PM_{2.5}$ precursors, such as NO_X and directly emitted $PM_{2.5}$. Co-benefits are shown as a range from Pope, *et al.* (2002) to Laden, *et al.* (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type.
[c] The engineering compliance costs are annualized using a 7-percent discount rate.

TABLE 5—SUMMARY OF THE MONETIZED BENEFITS, COMPLIANCE COSTS AND NET BENEFITS FOR THE 2010 RULE WITH THE PROPOSED AMENDMENTS TO THE STATIONARY SI ENGINE NESHAP IN 2013

[Millions of 2010 dollars] [a]

	3-Percent discount rate	7-Percent discount rate
Total monetized benefits [b]	$62 to $150	$55 to $140.
Total Compliance Costs [c]	$115	$115.
Net Benefits	$ −53 to $35	$ −60 to $25.
Non-Monetized Benefits	Health effects from exposure to HAP. Health effects from direct exposure to NO_2 and ozone. Health effects from $PM_{2.5}$ exposure from VOC. Ecosystem effects. Visibility impairment.	

[a] All estimates are for the implementation year (2013) and are rounded to two significant figures.
[b] The total monetized co-benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of $PM_{2.5}$ precursors, such as NO_X and directly emitted $PM_{2.5}$. Co-benefits are shown as a range from Pope, *et al.* (2002) to Laden, *et al.* (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because the scientific evidence is not yet sufficient to allow differentiation of effects estimates by particle type.
[c] The engineering compliance costs are annualized using a 7-percent discount rate.

For more information on the cost-benefit analysis, please refer to the RIA for these proposed amendments, which is available in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action does not impose an information collection burden because the agency is not requiring any additional recordkeeping, reporting, notification or other requirements in these proposed amendments. The changes being proposed in this action do not affect information collection, but include revisions to emission standards and other minor issues. However, the OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0548. 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 generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small 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. The companies owning facilities with affected RICE can be grouped into small and large categories using SBA general size standard definitions. Size standards are based on industry classification codes (*i.e.,* North American Industrial Classification System, or NAICS) that each company uses to identify the industry or industries in which they operate. The SBA defines a small business in terms of the maximum employment, annual sales, or annual energy-generating capacity (for electricity generating units—EGUs) of the owning entity. These thresholds vary by industry and are evaluated based on the primary industry classification of the affected companies. In cases where companies are classified by multiple NAICS codes, the most conservative SBA definition (*i.e.,* the NAICS code with the highest employee or revenue size standard) was used.

As mentioned earlier in this preamble, facilities across several industries use affected CI and SI stationary RICE; therefore, a number of size standards are utilized in this

analysis. For the 15 industries identified at the 6-digit NAICS code represented in this analysis, the employment size standard (where it applies) varies from 500 to 1,000 employees. The annual sales standard (where it applies) is as low as 0.75 million dollars and as high as 33.5 million dollars. In addition, for the electric power generation industry, the small business size standard is an ultimate parent entity defined as having a total electric output of 4 million megawatt-hours (MW-hr) in the previous fiscal year. The specific SBA size standard is identified for each affected industry within the industry profile to support this economic analysis.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of this action to all affected small entities across all industries affected. The percentage of small entities impacted by this proposal having annualized costs of greater than 1 percent of their sales is less than 2 percent according to the small entity analysis. We conclude that there is no significant economic impact on a substantial number of small entities for this rule.

For more information on the small entity impacts associated with the rule, please refer to the Economic Impact and Small Business Analyses in the public docket. These analyses can be found in the RIA for each of the rules affected by this action.

Although the proposed reconsideration rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless tried to reduce the impact of the rule on small entities. When developing the revised standards, EPA took special steps to ensure that the burdens imposed on small entities were minimal. EPA conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. In addition, as mentioned earlier in this preamble, EPA proposes to reduce regulatory requirements for a variety of area sources affected under each of the RICE rules with amendments to the final RICE rules promulgated in 2010. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA is proposing management practices for certain existing engines located at area sources and is proposing amendments that will provide owners and operators with alternative and less expensive compliance demonstration methods. As a result of these proposed changes, the EPA anticipates a substantial reduction in the cost burden associated with this rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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 changes being proposed in this action by the agency will mostly affect stationary engine owners and operators and will not affect small governments. The proposed amendments will lead to a reduction in the cost burden.

E. Executive Order 13132: Federalism

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 proposed action primarily affects private industry, and does not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action 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 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comment on this proposed action 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 are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations 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. This action reduces the burden of the rule on owners and operators of stationary engines by providing less burdensome compliance demonstration methods to owners and operators and greater flexibility in the operation of emergency engines. As a result of these proposed changes, the EPA anticipates a substantial reduction in the cost burden associated with this rule.

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 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 EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. The EPA proposes to use EPA Method 25A of 40 CFR part 60, appendix A. While the agency identified two voluntary consensus standards as being potentially

applicable, we do not propose to use it in this rulemaking. The two candidate voluntary consensus standards, ISO 14965:2000(E) and EN 12619 (1999), identified would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The search and review results have been documented and are placed in the docket for the proposed rule.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629 (February 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 concluded that it is not feasible to determine whether there would be disproportionately high and adverse human health or environmental effects on minority, low income or indigenous populations from the reconsideration of this final rule, as the EPA does not have specific information about the location of the stationary RICE affected by this rule.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 22, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart IIII—[Amended]

1. Section 60.4207 is amended by revising paragraph (b) to read as follows:

§ 60.4207 What fuel requirements must I meet if I am an owner or operator of a stationary CI internal combustion engine subject to this subpart?

* * * * *

(b) Beginning October 1, 2010, owners and operators of stationary CI ICE subject to this subpart with a displacement of less than 30 liters per cylinder that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(b) for nonroad diesel fuel, except that any existing diesel fuel purchased (or otherwise obtained) prior to October 1, 2010, may be used until depleted.

* * * * *

2. Section 60.4211 is amended by revising paragraph (f) to read as follows:

§ 60.4211 What are my compliance requirements if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(f) If you own or operate an emergency stationary ICE, you must operate the emergency stationary ICE according to the requirements in paragraphs (f)(1) through (3) of this section. In order for the engine to be considered an emergency stationary ICE under this subpart, any operation other than emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (f)(1) through (3) of this section, is prohibited. If you do not operate the engine according to the requirements in paragraphs (f)(1) through (3) of this section, the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines. An engine that exceeds the calendar year limitations on non-emergency operation will be considered a non-emergency engine and subject to the requirements for non-emergency engines for the remaining life of the engine.

(1) There is no time limit on the use of emergency stationary ICE in emergency situations.

(2) You may operate your emergency stationary ICE for any combination of the purposes specified in paragraphs (f)(2)(i) through (iii) of this section for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by paragraph (f)(3) of this section counts as part of the 100 hours per calendar year allowed by this paragraph (f)(2).

(i) Emergency stationary ICE may be operated for maintenance checks and readiness testing, provided that the tests are recommended by federal, state or local government, the manufacturer, the vendor, the regional transmission authority or equivalent balancing authority and transmission operator, or the insurance company associated with the engine. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that federal, state, or local standards require maintenance and testing of emergency ICE beyond 100 hours per calendar year.

(ii) Emergency stationary ICE may be operated for emergency demand response for periods in which the regional transmission authority or equivalent balancing authority and transmission operator has declared an Energy Emergency Alert Level 2 (EEA Level 2) as defined in the North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergencies.

(iii) Emergency stationary ICE may be operated for periods where there is a deviation of voltage or frequency of 5 percent or greater below standard voltage or frequency.

(3) Emergency stationary ICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in paragraph (f)(2) of this section. The 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to otherwise supply power as part of a financial arrangement with another entity.

* * * * *

3. Section 60.4219 is amended by revising the definition of ''Emergency stationary internal combustion engine'' to read as follows:

§ 60.4219 What definitions apply to this subpart?

* * * * *

Emergency stationary internal combustion engine means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary ICE must comply with the requirements specified in § 60.4211(f) in order to be considered emergency stationary ICE. If the engine does not comply with the requirements specified in § 60.4211(f), then it is not considered to be an emergency stationary ICE under this subpart.

(1) The stationary ICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc.

(2) The stationary ICE is operated under limited circumstances for situations not included in paragraph (1) of this definition, as specified in § 60.4211(f).

(3) The stationary ICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of this definition only as allowed in § 60.4211(f)(2)(ii) or (iii).

* * * * *

Subpart JJJJ—[Amended]

4. Section 60.4231 is amended by revising paragraphs (b) through (d) to read as follows:

§ 60.4231 What emission standards must I meet if I am a manufacturer of stationary SI internal combustion engines or equipment containing such engines?

* * * * *

(b) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) (except emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) that use gasoline and that are manufactured on or after the applicable date in § 60.4230(a)(2), or manufactured on or after the applicable date in § 60.4230(a)(4) for emergency stationary ICE with a maximum engine power greater than or equal to 130 HP, to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 1048. Stationary SI internal combustion engine manufacturers must certify their emergency stationary SI ICE greater than 25 HP and less than 130 HP that use gasoline and that are manufactured on or after the applicable date in § 60.4230(a)(4) to the Phase 1 emission standards in 40 CFR 90.103, applicable to class II engines, and other requirements for new nonroad SI engines in 40 CFR part 90. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cubic centimeters (cc) that use gasoline to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90.

(c) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) (except emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) that are rich burn engines that use LPG and that are manufactured on or after the applicable date in § 60.4230(a)(2), or manufactured on or after the applicable date in § 60.4230(a)(4) for emergency stationary ICE with a maximum engine power greater than or equal to 130 HP, to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 1048. Stationary SI internal combustion engine manufacturers must certify their emergency stationary SI ICE greater than 25 HP and less than 130 HP that are rich burn engines that use LPG and that are manufactured on or after the applicable date in § 60.4230(a)(4) to the Phase 1 emission standards in 40 CFR 90.103, applicable to class II engines, and other requirements for new nonroad SI engines in 40 CFR part 90. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc that are rich burn engines that use LPG to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90.

(d) Stationary SI internal combustion engine manufacturers who choose to certify their stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) and less than 75 KW (100 HP) (except gasoline and rich burn engines that use LPG and emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) under the voluntary manufacturer certification program described in this subpart must certify those engines to the certification emission standards for new nonroad SI engines in 40 CFR part 1048. Stationary SI internal combustion engine manufacturers who choose to certify their emergency stationary SI ICE greater than 25 HP and less than 130 HP (except gasoline and rich burn engines that use LPG), must certify those engines to the Phase 1 emission standards in 40 CFR 90.103, applicable to class II engines, for new nonroad SI engines in 40 CFR part 90. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc (except gasoline and rich burn engines that use LPG) to the certification emission standards for new nonroad SI engines in 40 CFR part 90. For stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) and less than 75 KW (100 HP) (except gasoline and rich burn engines that use LPG and emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) manufactured prior to January 1, 2011, manufacturers may choose to certify these engines to the standards in Table 1 to this subpart applicable to engines with a maximum engine power greater than or equal to 100 HP and less than 500 HP.

* * * * *

5. Section 60.4243 is amended by revising paragraph (d) to read as follows:

§ 60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine?

* * * * *

(d) If you own or operate an emergency stationary ICE, you must operate the emergency stationary ICE according to the requirements in paragraphs (d)(1) through (3) of this section. In order for the engine to be considered an emergency stationary ICE under this subpart, any operation other than emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (d)(1) through (3) of this section, is prohibited. If you do not operate the engine according to the requirements in paragraphs (d)(1) through (3) of this section, the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines. An engine that exceeds the calendar year limitations on non-emergency operation will be considered

a non-emergency engine and subject to the requirements for non-emergency engines for the remaining life of the engine.

(1) There is no time limit on the use of emergency stationary ICE in emergency situations.

(2) You may operate your emergency stationary ICE for any combination of the purposes specified in paragraphs (d)(2)(i) through (iii) of this section for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by paragraph (d)(3) of this section counts as part of the 100 hours per calendar year allowed by this paragraph (d)(2).

(i) Emergency stationary ICE may be operated for maintenance checks and readiness testing, provided that the tests are recommended by federal, state, or local government, the manufacturer, the vendor, the regional transmission authority or equivalent balancing authority and transmission operator, or the insurance company associated with the engine. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that federal, state, or local standards require maintenance and testing of emergency ICE beyond 100 hours per calendar year.

(ii) Emergency stationary ICE may be operated for emergency demand response for periods in which the regional transmission authority or equivalent balancing authority and transmission operator has declared an Energy Emergency Alert Level 2 (EEA Level 2) as defined in the North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergencies.

(iii) Emergency stationary ICE may be operated for periods where there is a deviation of voltage or frequency of 5 percent or greater below standard voltage or frequency.

(3) Emergency stationary ICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in paragraph (d)(2) of this section. The 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to otherwise supply power as part of a financial arrangement with another entity.

* * * * *

6. Section 60.4248 is amended by revising the definition of ''Emergency stationary internal combustion engine'' to read as follows:

§ 60.4248 What definitions apply to this subpart?

* * * * *

Emergency stationary internal combustion engine means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary ICE must comply with the requirements specified in § 60.4243(d) in order to be considered emergency stationary ICE. If the engine does not comply with the requirements specified in § 60.4243(d), then it is not considered to be an emergency stationary ICE under this subpart.

(1) The stationary ICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc.

(2) The stationary ICE is operated under limited circumstances for situations not included in paragraph (1) of this definition, as specified in § 60.4243(d).

(3) The stationary ICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of this definition only as allowed in § 60.4243(d)(2)(ii) or (iii).

* * * * *

7. Table 2 to subpart JJJJ of part 60 is revised to read as follows:

As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points.	(1) Method 1 or 1A of 40 CFR part 60, appendix A or ASTM Method D6522–00 (2005) [a].	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location.	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00 (2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust.	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and.	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
		v. Measure NO_X at the exhaust of the stationary internal combustion engine.	(5) Method 7E of 40 CFR part 60, appendix A, Method D6522–00 (2005) [a], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	b. limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points.	(1) Method 1 or 1A of 40 CFR part 60, appendix A or ASTM Method D6522–00 (2005) [a].	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location.	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00 (2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust.	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and.	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine.	(5) Method 10 of 40 CFR part 60, appendix A, ASTM Method D6522–00 (2005) [a], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points.	(1) Method 1 or 1A of 40 CFR part 60, appendix A.	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location.	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00 (2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust.	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and.	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each	Complying with the requirement to	You must	Using	According to the following requirements
		v. Measure VOC at the exhaust of the stationary internal combustion engine.	(5) Methods 25A and 18 of 40 CFR part 60, appendix A, Method 25A with the use of a methane cutter as described in 40 CFR 1065.265, Method 18 of 40 CFR part 60, appendix A[c d], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.

[a] ASTM D6522–00 is incorporated by reference; see 40 CFR 60.17. Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.

[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B.

[c] You may use EPA Method 18 of 40 CFR part 60, appendix A, provided that you conduct an adequate presurvey test prior to the emissions test, such as the one described in OTM 11 on EPA's Web site (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).

[d] You may use ASTM D6420–99 (2004), Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry as an alternative to EPA Method 18 for measuring total nonmethane organic.

PART 63—[AMENDED]

8. The authority citation for part 63 continues to read as follows:

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

Subpart ZZZZ—[Amended]

9. Section 63.6585 is amended by adding paragraph (f) to read as follows:

§ 63.6585 Am I subject to this subpart?

* * * * *

(f) The emergency stationary RICE listed in paragraphs (f)(1) through (3) of this section are not subject to this subpart. The stationary RICE must meet the definition of an emergency stationary RICE in § 63.6675, which includes operating according to the provisions specified in § 63.6640(f).

(1) Existing residential emergency stationary RICE located at an area source of HAP emissions.

(2) Existing commercial emergency stationary RICE located at an area source of HAP emissions.

(3) Existing institutional emergency stationary RICE located at an area source of HAP emissions.

§ 63.6590 [Amended]

10. Section 63.6590 is amended by removing paragraphs (b)(3)(vi) through (viii).

11. Section 63.6595 is amended by revising paragraph (a)(1) to read as follows:

§ 63.6595 When do I have to comply with this subpart?

(a) * * *

(1) If you have an existing stationary RICE, excluding existing non-emergency CI stationary RICE, with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the applicable emission limitations, operating limitations and other requirements no later than June 15, 2007. If you have an existing non-emergency CI stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, an existing stationary CI RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions, or an existing stationary CI RICE located at an area source of HAP emissions, you must comply with the applicable emission limitations, operating limitations, and other requirements no later than May 3, 2013. If you have an existing stationary SI RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions, or an existing stationary SI RICE located at an area source of HAP emissions, you must comply with the applicable emission limitations, operating limitations, and other requirements no later than October 19, 2013.

* * * * *

12. Section 63.6602 is revised to read as follows:

§ 63.6602 What emission limitations and other requirements must I meet if I own or operate an existing stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions?

If you own or operate an existing stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions, you must comply with the emission limitations and other requirements in Table 2c to this subpart which apply to you. Compliance with the numerical emission limitations established in this subpart is based on the results of testing the average of three 1-hour runs using the testing requirements and procedures in § 63.6620 and Table 4 to this subpart.

13. Section 63.6603 is amended by:

a. Revising the section heading;

b. Revising paragraph (b); and

c. Adding paragraphs (c) through (e) to read as follows:

§ 63.6603 What emission limitations, operating limitations, and other requirements must I meet if I own or operate an existing stationary RICE located at an area source of HAP emissions?

* * * * *

(b) If you own or operate an existing stationary non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP that meets either paragraph (b)(1) or (b)(2) of this section, you do not have to meet the numerical CO emission limitations specified in Table 2d of this subpart. Existing stationary non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP that meet either paragraph (b)(1) or (b)(2) of this section must meet the management practices that are shown for stationary non-emergency CI RICE with a site rating of less than or equal to 300 HP in Table 2d of this subpart.

(1) The area source is located in an area of Alaska that is not accessible by the Federal Aid Highway System (FAHS).

(2) The stationary RICE is located at an area source that meets paragraphs

(b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this section.

(i) The only connection to the FAHS is through the Alaska Marine Highway System (AMHS), or the stationary RICE operation is within an isolated grid in Alaska that is not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid.

(ii) At least 10 percent of the power generated by the stationary RICE on an annual basis is used for residential purposes.

(iii) The generating capacity of the area source is less than 12 megawatts, or the stationary RICE is used exclusively for backup power for renewable energy and is used less than 500 hrs per year on a 10 year rolling average.

(c) If you own or operate an existing non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP emissions that is certified to the Tier 1 or Tier 2 emission standards in Table 1 of 40 CFR 89.112 and that is subject to an enforceable state or local standard that requires the engine to be replaced no later than June 1, 2018, you may until January 1, 2015, or 12 years after the installation date of the engine (whichever is later), but not later than June 1, 2018, choose to comply with the management practices that are shown for stationary non-emergency CI RICE with a site rating of less than or equal to 300 HP in Table 2d of this subpart instead of the applicable emission limitations in Table 2d, operating limitations in Table 2b, and crankcase ventilation system requirements in § 63.6625(g). You must comply with the emission limitations in Table 2d and operating limitations in Table 2b that apply for non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP emissions by January 1, 2015, or 12 years after the installation date of the engine (whichever is later), but not later than June 1, 2018. You must also comply with the crankcase ventilation system requirements in § 63.6625(g) by January 1, 2015, or 12 years after the installation date of the engine (whichever is later), but not later than June 1, 2018.

(d) If you own or operate an existing non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP emissions that is certified to the Tier 3 (Tier 2 for engines above 560 kW) emission standards in Table 1 of 40 CFR 89.112, you may comply with the requirements under this part by meeting the requirements for Tier 3 engines (Tier 2 for engines above 560 kW) in 40 CFR part 60 subpart IIII instead of the emission limitations and other requirements that would otherwise apply under this part for existing non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP emissions.

(e) An existing non-emergency SI 4SLB and 4SRB stationary RICE with a site rating of more than 500 HP located at area sources of HAP must meet the definition of remote stationary RICE in § 63.6675 on the initial compliance date for the engine, October 19, 2013, in order to be considered a remote stationary RICE under this subpart. Owners and operators of existing non-emergency SI 4SLB and 4SRB stationary RICE with a site rating of more than 500 HP located at area sources of HAP that meet the definition of remote stationary RICE in § 63.6675 of this subpart as of October 19, 2013 must evaluate the status of their stationary RICE every 12 months. Owners and operators must keep records of the initial and annual evaluation of the status of the engine. If the evaluation indicates that the stationary RICE no longer meets the definition of remote stationary RICE in § 63.6675 of this subpart, the owner or operator must comply with all of the requirements for existing non-emergency SI 4SLB and 4SRB stationary RICE with a site rating of more than 500 HP located at area sources of HAP that are not remote stationary RICE within one year of the evaluation.

14. Section 63.6604 is revised to read as follows:

§ 63.6604 What fuel requirements must I meet if I own or operate an existing stationary CI RICE?

If you own or operate an existing non-emergency, non-black start CI stationary RICE with a site rating of more than 300 brake HP with a displacement of less than 30 liters per cylinder that uses diesel fuel, you must use diesel fuel that meets the requirements in 40 CFR 80.510(b) for nonroad diesel fuel. Existing non-emergency CI stationary RICE located in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or at area sources in areas of Alaska that meet either § 63.6603(b)(1) or § 63.6603(b)(2) are exempt from the requirements of this section.

15. Section 63.6605 is amended by revising paragraph (a) to read as follows:

§ 63.6605 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, operating limitations, and other requirements in this subpart that apply to you at all times.

* * * * *

16. Section 63.6620 is amended by revising paragraphs (b) and (e) to read as follows:

§ 63.6620 What performance tests and other procedures must I use?

* * * * *

(b) Each performance test must be conducted according to the requirements that this subpart specifies in Table 4 to this subpart. If you own or operate a non-operational stationary RICE that is subject to performance testing, you do not need to start up the engine solely to conduct the performance test. Owners and operators of a non-operational engine can conduct the performance test when the engine is started up again. The test must be conducted at any load condition within plus or minus 10 percent of 100 percent load for the stationary RICE listed in paragraphs (b)(1) through (4) of this section.

(1) Non-emergency 4SRB stationary RICE with a site rating of greater than 500 brake HP located at a major source of HAP emissions.

(2) New non-emergency 4SLB stationary RICE with a site rating of greater than or equal to 250 brake HP located at a major source of HAP emissions.

(3) New non-emergency 2SLB stationary RICE with a site rating of greater than 500 brake HP located at a major source of HAP emissions.

(4) New non-emergency CI stationary RICE with a site rating of greater than 500 brake HP located at a major source of HAP emissions.

* * * * *

(e)(1) You must use Equation 1 of this section to

$$\frac{C_i - C_o}{C_i} \times 100 = R \quad (Eq. 1)$$

determine compliance with the percent reduction requirement:

Where:

C_i = concentration of CO, THC, or formaldehyde at the control device inlet,

C_o = concentration of CO, THC, or formaldehyde at the control device outlet, and

R = percent reduction of CO, THC, or formaldehyde emissions.

(2) You must normalize the carbon monoxide (CO), total hydrocarbons (THC), or formaldehyde concentrations at the inlet and outlet of the control device to a dry basis and to 15 percent oxygen, or an equivalent percent carbon dioxide (CO_2). If pollutant

concentrations are to be corrected to 15 percent oxygen and CO_2 concentration is measured in lieu of oxygen concentration measurement, a CO_2 correction factor is needed. Calculate the CO_2 correction factor as described in paragraphs (e)(2)(i) through (iii) of this section.

(i) Calculate the fuel-specific F_o value for the fuel burned during the test using values obtained from Method 19,

$$F_O = \frac{0.209\ F_d}{F_C} \quad (Eq.\ 2)$$

Section 5.2, and the following equation:

Where:

F_o = Fuel factor based on the ratio of oxygen volume to the ultimate CO_2 volume produced by the fuel at zero percent excess air.

0.209 = Fraction of air that is oxygen, percent/100.

F_d = Ratio of the volume of dry effluent gas to the gross calorific value of the fuel from Method 19, dsm^3/J ($dscf/10^6$ Btu).

F_c = Ratio of the volume of CO_2 produced to the gross calorific value of the fuel from Method 19, dsm^3/J ($dscf/10^6$ Btu)

(ii) Calculate the CO_2 correction factor for correcting

$$X_{CO2} = \frac{5.9}{F_O} \quad (Eq.\ 3)$$

measurement data to 15 percent oxygen, as follows:

Where:

X_{co2} = CO_2 correction factor, percent.

5.9 = 20.9 percent O_2—15 percent O_2, the defined O_2 correction value, percent.

(iii) Calculate the CO, THC, and formaldehyde gas concentrations adjusted to 15 percent O_2 using CO_2 as follows:

$$C_{adj} = C_d \frac{X_{CO2}}{\%CO_2} \quad (Eq.\ 4)$$

Where:

$\%CO_2$ = Measured CO_2 concentration measured, dry basis, percent.

* * * * *

17. Section 63.6625 is amended by:

a. Revising the introductory text of paragraph (a);

b. Revising the introductory text of paragraph (b);

c. Revising paragraph (e)(6); and

d. Revising paragraph (g) to read as follows:

§ 63.6625 What are my monitoring, installation, collection, operation, and maintenance requirements?

(a) If you elect to install a CEMS as specified in Table 5 of this subpart, you must install, operate, and maintain a CEMS to monitor CO and either oxygen or CO_2 according to the requirements in paragraphs (a)(1) through (4) of this section. If you are meeting a requirement to reduce CO emissions, the CEMS must be installed at both the inlet and outlet of the control device. If you are meeting a requirement to limit the concentration of CO, the CEMS must be installed at the outlet of the control device. * * *

* * * * *

(b) If you are required to install a continuous parameter monitoring system (CPMS) as specified in Table 5 of this subpart, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (b)(1) through (6) of this section. * * *

* * * * *

(e) * * *

(6) An existing non-emergency, non-black start stationary RICE located at an area source of HAP emissions which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis;

* * * * *

(g) If you own or operate an existing non-emergency, non-black start CI engine greater than or equal to 300 HP that is not equipped with a closed crankcase ventilation system, you must comply with either paragraph (g)(1) or paragraph (g)(2) of this section. Owners and operators must follow the manufacturer's specified maintenance requirements for operating and maintaining the open or closed crankcase ventilation systems and replacing the crankcase filters, or can request the Administrator to approve different maintenance requirements that are as protective as manufacturer requirements. Existing CI engines located at area sources in areas of Alaska that meet either § 63.6603(b)(1) or § 63.6603(b)(2) do not have to meet the requirements of paragraph (g) of this section.

(1) Install a closed crankcase ventilation system that prevents crankcase emissions from being emitted to the atmosphere, or

(2) Install an open crankcase filtration emission control system that reduces emissions from the crankcase by filtering the exhaust stream to remove oil mist, particulates and metals.

* * * * *

18. Section 63.6630 is amended by:

a. Revising the section heading;

b. Revising paragraph (a);

c. Adding paragraph (d); and

d. Adding paragraph (e) to read as follows:

§ 63.6630 How do I demonstrate initial compliance with the emission limitations, operating limitations, and other requirements?

(a) You must demonstrate initial compliance with each emission limitation, operating limitation, and other requirement that applies to you according to Table 5 of this subpart.

* * * * *

(d) Non-emergency 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more can demonstrate initial compliance with the formaldehyde emission limit by testing for THC instead of formaldehyde. The testing must be conducted according to the requirements in Table 4 of this subpart. The average reduction of emissions of THC determined from the performance test must be equal to or greater than 30 percent.

(e) The initial compliance demonstration required for existing non-emergency 4SLB and 4SRB stationary RICE with a site rating of more than 500 HP located at an area source of HAP that are not remote stationary RICE and that are operated more than 24 hours per calendar year must be conducted according to the following requirements:

(1) The compliance demonstration must consist of at least three test runs.

(2) Each test run must be of at least 15 minute duration, except that each test conducted using the method in appendix A to this subpart must consist of at least one measurement cycle and include at least 2 minutes of test data phase measurement.

(3) If you are demonstrating compliance with the CO concentration or CO percent reduction requirement, you must measure CO emissions using one of the CO measurement methods specified in Table 4 of this subpart, or using appendix A to this subpart.

(4) If you are demonstrating compliance with the THC percent reduction requirement, you must measure THC emissions using Method 25A of 40 CFR part 60, appendix A.

(5) You must measure O_2 using one of the O_2 measurement methods specified in Table 4 of this subpart. Measurements to determine O_2 concentration must be made at the same time as the measurements for CO or THC concentration.

(6) If you are demonstrating compliance with the CO or THC percent reduction requirement, you must measure CO or THC emissions and O_2 emissions simultaneously at the inlet and outlet of the control device.

19. Section 63.6640 is amended by:

a. Amending the section heading;

b. Revising paragraph (a);

c. Revising paragraph (c); and

d. Revising paragraph (f) to read as follows:

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations, operating limitations, and other requirements?

(a) You must demonstrate continuous compliance with each emission limitation, operating limitation, and other requirements in Tables 1a and 1b, Tables 2a and 2b, Table 2c, and Table 2d to this subpart that apply to you according to methods specified in Table 6 to this subpart.

* * * * *

(c) The annual compliance demonstration required for existing non-emergency 4SLB and 4SRB stationary RICE with a site rating of more than 500 HP located at an area source of HAP that are not remote stationary RICE and that are operated more than 24 hours per calendar year must be conducted according to the following requirements:

(1) The compliance demonstration must consist of at least one test run.

(2) Each test run must be of at least 15 minute duration, except that each test conducted using the method in appendix A to this subpart must consist of at least one measurement cycle and include at least 2 minutes of test data phase measurement.

(3) If you are demonstrating compliance with the CO concentration or CO percent reduction requirement, you must measure CO emissions using one of the CO measurement methods specified in Table 4 of this subpart, or using appendix A to this subpart.

(4) If you are demonstrating compliance with the THC percent reduction requirement, you must measure THC emissions using Method 25A of 40 CFR part 60, appendix A.

(5) You must measure O_2 using one of the O_2 measurement methods specified in Table 4 of this subpart. Measurements to determine O_2 concentration must be made at the same time as the measurements for CO or THC concentration.

(6) If you are demonstrating compliance with the CO or THC percent reduction requirement, you must measure CO or THC emissions and O_2 emissions simultaneously at the inlet and outlet of the control device.

(7) If the results of the annual compliance demonstration show that the emissions exceed the levels specified in Table 6 of this subpart, the stationary RICE must be shut down as soon as safely possible, and appropriate corrective action must be taken (*e.g.,* repairs, catalyst cleaning, catalyst replacement). The stationary RICE must be retested within 7 days of being restarted and the emissions must meet the levels specified in Table 6 of this subpart. If the retest shows that the emissions continue to exceed the specified levels, the stationary RICE must again be shut down as soon as safely possible, and the stationary RICE may not operate, except for purposes of startup and testing, until the owner/operator demonstrates through testing that the emissions do not exceed the levels specified in Table 6 of this subpart.

* * * * *

(f) If you own or operate an emergency stationary RICE, you must operate the emergency stationary RICE according to the requirements in paragraphs (f)(1) through (4) of this section. In order for the engine to be considered an emergency stationary RICE under this subpart, any operation other than emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (f)(1) through (4) of this section, is prohibited. If you do not operate the engine according to the requirements in paragraphs (f)(1) through (4) of this section, the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines. An engine that exceeds the calendar year limitations on non-emergency operation will be considered a non-emergency engine and subject to the requirements for non-emergency engines for the remaining life of the engine.

(1) There is no time limit on the use of emergency stationary RICE in emergency situations.

(2) You may operate your emergency stationary RICE for any combination of the purposes specified in paragraphs (f)(2)(i) through (iii) of this section for a maximum of 100 hours per calendar year. Any operation for non-emergency situations as allowed by paragraphs (f)(3) and (4) of this section counts as part of the 100 hours per calendar year allowed by this paragraph (f)(2).

(i) Emergency stationary RICE may be operated for maintenance checks and readiness testing, provided that the tests are recommended by federal, state or local government, the manufacturer, the vendor, the regional transmission authority or equivalent balancing authority and transmission operator, or the insurance company associated with the engine. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that federal, state, or local standards require maintenance and testing of emergency RICE beyond 100 hours per calendar year.

(ii) Emergency stationary RICE may be operated for emergency demand response for periods in which the regional transmission authority or equivalent balancing authority and transmission operator has declared an Energy Emergency Alert Level 2 (EEA Level 2) as defined in the North American Electric Reliability Corporation Reliability Standard EOP–002–3, Capacity and Energy Emergencies.

(iii) Emergency stationary RICE may be operated for periods where there is a deviation of voltage or frequency of 5 percent or greater below standard voltage or frequency.

(3) Emergency stationary RICE located at major sources of HAP may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in paragraph (f)(2) of this section. The 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

(4) Existing emergency stationary RICE located at area sources of HAP may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing and emergency demand response provided in paragraph (f)(2) of this section.

(i) Prior to April 16, 2017, the 50 hours per year for non-emergency situations can be used for peak shaving or non-emergency demand response to generate income for a facility, or to otherwise supply power as part of a financial arrangement with another entity if engines is operated as part of a peak shaving (load management program) with the local distribution system operator and the power is provided only to the facility itself or to support the local distribution system.

(ii) On or after April 16, 2017, the 50 hours per year for non-emergency situations cannot be used for peak shaving or non-emergency demand response, or to otherwise supply power

as part of a financial arrangement with another entity.

* * * * *

20. Section 63.6645 is amended by adding a new paragraph (i) to read as follows:

§ 63.6645 What notifications must I submit and when?

* * * * *

(i) If you own or operate an existing non-emergency CI RICE with a site rating of more than 300 HP located at an area source of HAP emissions that is certified to the Tier 1 or Tier 2 emission standards in Table 1 of 40 CFR 89.112 and subject to an enforceable state or local standard requiring engine replacement and you intend to meet management practices rather than emission limits, as specified in § 63.6603(c), you must submit a notification by March 3, 2013, stating that you intend to use the provision in § 63.6603(c) and identifying the state or local regulation that the engine is subject to.

21. Section 63.6675 is amended by:

a. Adding in alphabetical order the definition of *Alaska Railbelt Grid;*

b. Revising the definition of *Emergency stationary RICE;* and

c. Adding in alphabetical order the definition of *Remote stationary RICE* to read as follows.

§ 63.6675 What definitions apply to this subpart?

* * * * *

Alaska Railbelt Grid means the service areas of the six regulated public utilities that extend from Fairbanks to Anchorage and the Kenai Peninsula. These utilities are Golden Valley Electric Association; Chugach Electric Association; Matanuska Electric Association; Homer Electric Association; Anchorage Municipal Light & Power; and the City of Seward Electric System.

* * * * *

Emergency stationary RICE means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary RICE must comply with the requirements specified in § 63.6640(f) in order to be considered emergency stationary RICE. If the engine does not comply with the requirements specified in § 63.6640(f), then it is not considered to be an emergency stationary RICE under this subpart.

(1) The stationary RICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc.

(2) The stationary RICE is operated under limited circumstances for situations not included in paragraph (1) of this definition, as specified in § 63.6640(f).

(3) The stationary RICE operates as part of a financial arrangement with another entity in situations not included in paragraph (1) of this definition only as allowed in § 63.6640(f)(2)(ii) or (iii) and § 63.6640(f)(4)(i).

* * * * *

Remote stationary RICE means stationary RICE meeting any of the following criteria:

(1) Stationary RICE located in an offshore area that is beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

(2) Stationary RICE located on a pipeline segment that meets both of the criteria in paragraphs (2)(i) and (ii) of this definition.

(i) A pipeline segment with 10 or fewer buildings intended for human occupancy within 220 yards (200 meters) on either side of the centerline of any continuous 1-mile (1.6 kilometers) length of pipeline. Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(ii) The pipeline segment does not lie within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. The days and weeks need not be consecutive. The building or area is considered occupied for a full day if it is occupied for any portion of the day.

(iii) For purposes of this paragraph (2), the term pipeline segment means all parts of those physical facilities through which gas moves in transportation, including but not limited to pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. Stationary RICE located within 50 yards (46 m) of the pipeline segment providing power for equipment on a pipeline segment are part of the pipeline segment. Transportation of gas means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas. A building is intended for human occupancy if its primary use is for a purpose involving the presence of humans.

(3) Stationary RICE that are not located on gas pipelines and that have 5 or fewer buildings intended for human occupancy within a 0.25 mile radius around the engine. A building is intended for human occupancy if its primary use is for a purpose involving the presence of humans.

* * * * *

22. Table 1b to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6600, 63.6603, 63.6630 and 63.6640, you must comply with the following operating limitations for existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions:

TABLE 1b TO SUBPART ZZZZ OF PART 63—OPERATING LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SI 4SRB STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS

For each . . .	You must meet the following operating limitation, except during periods of startup . . .
1. existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and using NSCR; or	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the initial performance test; and

TABLE 1b TO SUBPART ZZZZ OF PART 63—OPERATING LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SI 4SRB STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS—Continued

For each . . .	You must meet the following operating limitation, except during periods of startup . . .
existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and using NSCR;	b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 750°F and less than or equal to 1250° F.[1]
2. existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and not using NSCR; or existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and not using NSCR.	Comply with any operating limitations approved by the Administrator.

[1] Sources can petition the Administrator pursuant to the requirements of 40 CFR 63.8(f) for a different temperature range.

23. Table 2b to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6600, 63.6601, 63.6603, 63.6630, and 63.6640, you must comply with the following operating limitations for new and reconstructed 2SLB and CI stationary RICE >500 HP located at a major source of HAP emissions; new and reconstructed 4SLB stationary RICE ≥250 HP located at a major source of HAP emissions; and existing CI stationary RICE >500 HP:

TABLE 2b TO SUBPART ZZZZ OF PART 63—OPERATING LIMITATIONS FOR NEW AND RECONSTRUCTED 2SLB AND CI STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS, NEW AND RECONSTRUCTED 4SLB STATIONARY RICE ≥250 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS, EXISTING CI STATIONARY RICE >500 HP, AND EXISTING 4SLB STATIONARY RICE >500 HP LOCATED AT AN AREA SOURCE OF HAP EMISSIONS

For each . . .	You must meet the following operating limitation, except during periods of startup . . .
1. New and reconstructed 2SLB and CI stationary RICE >500 HP located at a major source of HAP emissions and new and reconstructed 4SLB stationary RICE ≥250 HP located at a major source of HAP emissions complying with the requirement to reduce CO emissions and using an oxidation catalyst; and New and reconstructed 2SLB and CI stationary RICE >500 HP located at a major source of HAP emissions and new and reconstructed 4SLB stationary RICE ≥250 HP located at a major source of HAP emissions complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and using an oxidation catalyst.	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst that was measured during the initial performance test; and b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 450 °F and less than or equal to 1350 °F.[1]
2. Existing CI stationary RICE >500 HP complying with the requirement to limit or reduce the concentration of CO in the stationary RICE exhaust and using an oxidation catalyst.	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water from the pressure drop across the catalyst that was measured during the initial performance test; and b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 450 °F and less than or equal to 1350 °F.[1]
3. New and reconstructed 2SLB and CI stationary RICE >500 HP located at a major source of HAP emissions and new and reconstructed 4SLB stationary RICE ≥250 HP located at a major source of HAP emissions complying with the requirement to reduce CO emissions and not using an oxidation catalyst; and New and reconstructed 2SLB and CI stationary RICE >500 HP located at a major source of HAP emissions and new and reconstructed 4SLB stationary RICE ≥250 HP located at a major source of HAP emissions complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and not using an oxidation catalyst and existing CI stationary RICE >500 HP complying with the requirement to limit or reduce the concentration of CO in the stationary RICE exhaust and not using an oxidation catalyst.	Comply with any operating limitations approved by the Administrator.

[1] Sources can petition the Administrator pursuant to the requirements of 40 CFR 63.8(f) for a different temperature range.

24. Table 2c to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6600, 63.6602, and 63.6640, you must comply with the following requirements for existing compression ignition stationary RICE located at a major source of HAP emissions and existing spark ignition stationary RICE ≤500 HP located at a major source of HAP emissions:

TABLE 2c TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR EXISTING COMPRESSION IGNITION STATIONARY RICE LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS AND EXISTING SPARK IGNITION STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS

For each . . .	You must meet the following requirement, except during periods of startup . . .	During periods of startup you must . . .
1. Emergency stationary CI RICE and black start stationary CI RICE.[1]	a. Change oil and filter every 500 hours of operation or annually, whichever comes first;[2] b. Inspect air cleaner every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; c. Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.[3]	Minimize the engine's time spent at idle and minimize the engine's startup time at startup to a period needed for appropriate and safe loading of the engine, not to exceed 30 minutes, after which time the non-startup emission limitations apply.[3]
2. Non-Emergency, non-black start stationary CI RICE <100 HP.	a. Change oil and filter every 1,000 hours of operation or annually, whichever comes first;[2] b. Inspect air cleaner every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; c. Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.[3]	
3. Non-Emergency, non-black start CI stationary RICE 100 ≤HP≤300 HP.	Limit concentration of CO in the stationary RICE exhaust to 230 ppmvd or less at 15 percent O_2.	
4. Non-Emergency, non-black start CI stationary RICE 300<HP≤500.	a. Limit concentration of CO in the stationary RICE exhaust to 49 ppmvd or less at 15 percent O_2; or b. Reduce CO emissions by 70 percent or more.	
5. Non-Emergency, non-black start stationary CI RICE >500 HP.	a. Limit concentration of CO in the stationary RICE exhaust to 23 ppmvd or less at 15 percent O_2; or b. Reduce CO emissions by 70 percent or more.	
6. Emergency stationary SI RICE and black start stationary SI RICE.[1]	a. Change oil and filter every 500 hours of operation or annually, whichever comes first;[2] b. Inspect spark plugs every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; c. Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.[3]	
7. Non-Emergency, non-black start stationary SI RICE <100 HP that are not 2SLB stationary RICE.	a. Change oil and filter every 1,440 hours of operation or annually, whichever comes first;[2] b. Inspect spark plugs every 1,440 hours of operation or annually, whichever comes first, and replace as necessary; c. Inspect all hoses and belts every 1,440 hours of operation or annually, whichever comes first, and replace as necessary.[3]	
8. Non-Emergency, non-black start 2SLB stationary SI RICE <100 HP.	a. Change oil and filter every 4,320 hours of operation or annually, whichever comes first;[2] b. Inspect spark plugs every 4,320 hours of operation or annually, whichever comes first, and replace as necessary; c. Inspect all hoses and belts every 4,320 hours of operation or annually, whichever comes first, and replace as necessary.[3]	
9. Non-emergency, non-black start 2SLB stationary RICE 100≤HP≤500	Limit concentration of CO in the stationary RICE exhaust to 225 ppmvd or less at 15 percent O_2.	

TABLE 2c TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR EXISTING COMPRESSION IGNITION STATIONARY RICE LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS AND EXISTING SPARK IGNITION STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS—Continued

For each . . .	You must meet the following requirement, except during periods of startup . . .	During periods of startup you must . . .
10. Non-emergency, non-black start 4SLB stationary RICE 100≤HP≤500	Limit concentration of CO in the stationary RICE exhaust to 47 ppmvd or less at 15 percent O_2.	
11. Non-emergency, non-black start 4SRB stationary RICE 100≤HP≤500	Limit concentration of formaldehyde in the stationary RICE exhaust to 10.3 ppmvd or less at 15 percent O_2.	
12. Non-emergency, non-black start stationary RICE 100≤HP≤500 which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis	Limit concentration of CO in the stationary RICE exhaust to 177 ppmvd or less at 15 percent O_2.	

[1] If an emergency engine is operating during an emergency and it is not possible to shut down the engine in order to perform the work practice requirements on the schedule required in Table 2c of this subpart, or if performing the work practice on the required schedule would otherwise pose an unacceptable risk under federal, state, or local law, the work practice can be delayed until the emergency is over or the unacceptable risk under federal, state, or local law has abated. The work practice should be performed as soon as practicable after the emergency has ended or the unacceptable risk under federal, state, or local law has abated. Sources must report any failure to perform the work practice on the schedule required and the federal, state or local law under which the risk was deemed unacceptable.

[2] Sources have the option to utilize an oil analysis program as described in § 63.6625(i) in order to extend the specified oil change requirement in Table 2c of this subpart.

[3] Sources can petition the Administrator pursuant to the requirements of 40 CFR 63.6(g) for alternative work practices.

25. Table 2d to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6603 and 63.6640, you must comply with the following requirements for existing stationary RICE located at area sources of HAP emissions:

TABLE 2d TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR EXISTING STATIONARY RICE LOCATED AT AREA SOURCES OF HAP EMISSIONS

For each . . .	You must meet the following requirement, except during periods of startup . . .	During periods of startup you must . . .
1. Non-Emergency, non-black start CI stationary RICE ≤300 HP.	a. Change oil and filter every 1,000 hours of operation or annually, whichever comes first; [1] b. Inspect air cleaner every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.	Minimize the engine's time spent at idle and minimize the engine's startup time at startup to a period needed for appropriate and safe loading of the engine, not to exceed 30 minutes, after which time the non-startup emission limitations apply.
2. Non-Emergency, non-black start CI stationary RICE 300 < HP ≤ 500.	a. Limit concentration of CO in the stationary RICE exhaust to 49 ppmvd at 15 percent O_2; or b. Reduce CO emissions by 70 percent or more.	
3. Non-Emergency, non-black start CI stationary RICE >500 HP.	a. Limit concentration of CO in the stationary RICE exhaust to 23 ppmvd at 15 percent O_2; or b. Reduce CO emissions by 70 percent or more.	
4. Emergency stationary CI RICE and black start stationary CI RICE.[2]	a. Change oil and filter every 500 hours of operation or annually, whichever comes first; [1] b. Inspect air cleaner every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.	

TABLE 2d TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR EXISTING STATIONARY RICE LOCATED AT AREA SOURCES OF HAP EMISSIONS—Continued

For each . . .	You must meet the following requirement, except during periods of startup . . .	During periods of startup you must . . .
5. Emergency stationary SI RICE; black start stationary SI RICE; non-emergency, non-black start 4SLB stationary RICE >500 HP that operate 24 hours or less per calendar year; non-emergency, non-black start 4SRB stationary RICE >500 HP that operate 24 hours or less per calendar year.[2]	a. Change oil and filter every 500 hours of operation or annually, whichever comes first; [1] b. Inspect spark plugs every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.	
6. Non-emergency, non-black start 2SLB stationary RICE.	a. Change oil and filter every 4,320 hours of operation or annually, whichever comes first; [1] b. Inspect spark plugs every 4,320 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 4,320 hours of operation or annually, whichever comes first, and replace as necessary.	
7. Non-emergency, non-black start 4SLB stationary RICE ≤500 HP; non-emergency, non-black start 4SLB remote stationary RICE >500 HP.	a. Change oil and filter every 1,440 hours of operation or annually, whichever comes first; [1] b. Inspect spark plugs every 1,440 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 1,440 hours of operation or annually, whichever comes first, and replace as necessary.	
8. Non-emergency, non-black start 4SLB stationary RICE >500 HP that are not remote stationary RICE and that operate more than 24 hours per calendar year.	Install an oxidation catalyst to reduce HAP emissions from the stationary RICE.	
9. Non-emergency, non-black start 4SRB stationary RICE ≤500 HP; non-emergency, non-black start 4SRB remote stationary RICE >500 HP.	a. Change oil and filter every 1,440 hours of operation or annually, whichever comes first; [1] b. Inspect spark plugs every 1,440 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 1,440 hours of operation or annually, whichever comes first, and replace as necessary.	
10. Non-emergency, non-black start 4SRB stationary RICE >500 HP that are not remote stationary RICE and that operate more than 24 hours per calendar year.	Install NSCR to reduce HAP emissions from the stationary RICE.	
11. Non-emergency, non-black start stationary RICE which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis.	a. Change oil and filter every 1,440 hours of operation or annually, whichever comes first; [1] b. Inspect spark plugs every 1,440 hours of operation or annually, whichever comes first, and replace as necessary; and c. Inspect all hoses and belts every 1,440 hours of operation or annually, whichever comes first, and replace as necessary.	

[1] Sources have the option to utilize an oil analysis program as described in § 63.6625(i) in order to extend the specified oil change requirement in Table 2d of this subpart.

[2] If an emergency engine is operating during an emergency and it is not possible to shut down the engine in order to perform the management practice requirements on the schedule required in Table 2d of this subpart, or if performing the management practice on the required schedule would otherwise pose an unacceptable risk under federal, state, or local law, the management practice can be delayed until the emergency is over or the unacceptable risk under federal, state, or local law has abated. The management practice should be performed as soon as practicable after the emergency has ended or the unacceptable risk under federal, state, or local law has abated. Sources must report any failure to perform the management practice on the schedule required and the federal, state or local law under which the risk was deemed unacceptable.

26. Table 3 to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6615 and 63.6620, you must comply with the following subsequent performance test requirements:

TABLE 3 TO SUBPART ZZZZ OF PART 63—SUBSEQUENT PERFORMANCE TESTS

For each . . .	Complying with the requirement to . . .	You must . . .
1. New or reconstructed 2SLB stationary RICE >500 HP located at major sources; new or reconstructed 4SLB stationary RICE ≥250 HP located at major sources; and new or reconstructed CI stationary RICE >500 HP located at major sources.	Reduce CO emissions and not using a CEMS	Conduct subsequent performance tests semiannually [1].
2. 4SRB stationary RICE ≥5,000 HP located at major sources.	Reduce formaldehyde emissions	Conduct subsequent performance tests semiannually[1].
3. Stationary RICE >500 HP located at major sources and new or reconstructed 4SLB stationary RICE 250 ≤ HP ≤500 located at major sources.	Limit the concentration of formaldehyde in the stationary RICE exhaust.	Conduct subsequent performance tests semiannually [1].
4. Existing non-emergency, non-black start CI stationary RICE >500 HP that are not limited use stationary RICE.	Limit or reduce CO emissions and not using a CEMS ..	Conduct subsequent performance tests every 8,760 hrs or 3 years, whichever comes first.
5. Existing non-emergency, non-black start CI stationary RICE >500 HP that are limited use stationary RICE.	Limit or reduce CO emissions and not using a CEMS ...	Conduct subsequent performance tests every 8,760 hrs or 5 years, whichever comes first.

[1] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

27. Table 4 to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6610, 63.6611, 63.6612, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE:

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
1. 2SLB, 4SLB, and CI stationary RICE.	a. reduce CO emissions ...	i. Measure the O_2 at the inlet and outlet of the control device; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00 (2005) [a] (incorporated by reference, see § 63.14).	(a) Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.
		ii. Measure the CO at the inlet and the outlet of the control device.	(1) ASTM D6522–00 (2005) [a,b] (incorporated by reference, see § 63.14) or Method 10 of 40 CFR part 60, appendix A.	(a) The CO concentration must be at 15 percent O_2, dry basis.

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
2. 4SRB stationary RICE ..	a. reduce formaldehyde emissions.	i. Select the sampling port location and the number of traverse points; and	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00 (2005).	(a) measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde or THC concentration.
		iii. Measure moisture content at the inlet and outlet of the control device; and	(1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.	(a) measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde or THC concentration.
		iv. If demonstrating compliance with the formaldehyde percent reduction requirement, measure formalde-hyde at the inlet and the outlet of the control device.	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [c], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
		v. If demonstrating compliance with the THC percent reduction requirement, measure THC at the inlet and the outlet of the control device.	(1) Method 25A of 40 CFR part 60, appendix A.	(a) THC concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE	a. limit the concentration of formalde-hyde or CO in the stationary RICE exhaust.	i. Select the sampling port location and the number of traverse points; and	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) if using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location; and	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00 (2005).	(a) measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde or CO concentration.
		iii. Measure moisture content of the station-ary RICE exhaust at the sampling port location; and	(1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.	(a) measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde or CO concentration.
		iv. Measure formalde-hyde at the exhaust of the station-ary RICE; or	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [c], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		v. measure CO at the exhaust of the station-ary RICE.	(1) Method 10 of 40 CFR part 60, appendix A, ASTM Method D6522–00 (2005) [a], Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03.	(a) CO concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[a] You may obtain a copy of ASTM–D6522–00 (2005) from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106. ASTM–D6522–00 (2005) may be used to test both CI and SI stationary RICE.
[b] You may also use Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03.
[c] You may obtain a copy of ASTM–D6348–03 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

28. Table 5 to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in §§ 63.6612, 63.6625 and 63.6630, you must initially comply with the emission and operating limitations as required by the following:

TABLE 5 TO SUBPART ZZZZ OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
1. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP located at an area source of HAP.	a. Reduce CO emissions and using oxidation catalyst, and using a CPMS.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
2. Non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP located at an area source of HAP.	a. Limit the concentration of CO, using oxidation catalyst, and using a CPMS.	i. The average CO concentration determined from the initial performance test is less than or equal to the CO emission limitation; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
3. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP located at an area source of HAP.	a. Reduce CO emissions and not using oxidation catalyst.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
4. Non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP located at an area source of HAP.	a. Limit the concentration of CO, and not using oxidation catalyst.	i. The average CO concentration determined from the initial performance test is less than or equal to the CO emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.

TABLE 5 TO SUBPART ZZZZ OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS—Continued

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
5. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP located at an area source of HAP.	a. Reduce CO emissions, and using a CEMS	i. You have installed a CEMS to continuously monitor CO and either O_2 or CO_2 at both the inlet and outlet of the oxidation catalyst according to the requirements in §63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and iii. The average reduction of CO calculated using §63.6620 equals or exceeds the required percent reduction. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average percent reduction achieved during the 4-hour period.
6. Non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP located at an area source of HAP.	a. Limit the concentration of CO, and using a CEMS.	i. You have installed a CEMS to continuously monitor CO and either O_2 or CO_2 at the outlet of the oxidation catalyst according to the requirements in §63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and iii. The average concentration of CO calculated using §63.6620 is less than or equal to the CO emission limitation. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average concentration measured during the 4-hour period.
7. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Reduce formaldehyde emissions and using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction, or the average reduction of emissions of THC determined from the initial performance test is equal to or greater than 30 percent; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in §63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
8. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Reduce formaldehyde emissions and not using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in §63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
9. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP, and existing non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in §63.6625(b); and

TABLE 5 TO SUBPART ZZZZ OF PART 63—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND OPERATING LIMITATIONS—Continued

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
		iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
10. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP, and existing non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
11. Existing non-emergency stationary RICE 100≤HP≤500 located at a major source of HAP, and existing non-emergency stationary CI RICE 300≤HP≤500 located at an area source of HAP.	a. Reduce CO emissions	i. The average reduction of emissions of CO or formaldehyde, as applicable determined from the initial performance test is equal to or greater than the required CO or formaldehyde, as applicable, percent reduction.
12. Existing non-emergency stationary RICE 100≤HP≤500 located at a major source of HAP, and existing non-emergency stationary CI RICE 300≤HP≤500 located at an area source of HAP.	a. Limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. The average formaldehyde or CO concentration, as applicable, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde or CO emission limitation, as applicable.
13. Existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are not remote stationary RICE and that are operated more than 24 hours per calendar year.	a. Install an oxidation catalyst	i. You have conducted an initial compliance demonstration as specified in § 63.6630(e) to show that the average reduction of emissions of CO is 93 percent or more, or the average CO concentration is less than or equal to 47 ppmvd at 15 percent O_2. ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b), or you have installed equipment to automatically shut down the engine if the catalyst inlet temperature exceeds 1350 °F.
14. Existing non-emergency 4SRB stationary RICE >500 HP located at an area source of HAP that are not remote stationary RICE and that are operated more than 24 hours per calendar year.	a. Install NSCR	i. You have conducted an initial compliance demonstration as specified in § 63.6630(e) to show that the average reduction of emissions of CO is 75 percent or more, or the average reduction of emissions of THC is 30 percent or more. ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b), or you have installed equipment to automatically shut down the engine if the catalyst inlet temperature exceeds 1250 °F.

29. Table 6 to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in § 63.6640, you must continuously comply with the emissions and operating limitations and work or management practices as required by the following:

TABLE 6 TO SUBPART ZZZZ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS, OPERATING LIMITATIONS, WORK PRACTICES, AND MANAGEMENT PRACTICES

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
1. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, and new or reconstructed non-emergency CI stationary RICE >500 HP located at a major source of HAP.	a. Reduce CO emissions and using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved; [a] and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
2. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, and new or reconstructed non-emergency CI stationary RICE >500 HP located at a major source of HAP.	a. Reduce CO emissions and not using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved; [a] and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
3. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, new or reconstructed non-emergency stationary CI RICE >500 HP located at a major source of HAP, and existing non-emergency stationary CI RICE >500 HP.	a. Reduce CO emissions or limit the concentration of CO in the stationary RICE exhaust, and using a CEMS.	i. Collecting the monitoring data according to § 63.6625(a), reducing the measurements to 1-hour averages, calculating the percent reduction or concentration of CO emissions according to § 63.6620; and ii. Demonstrating that the catalyst achieves the required percent reduction of CO emissions over the 4-hour averaging period, or that the emission remain at or below the CO concentration limit; and iii. Conducting an annual RATA of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.
4. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Reduce formaldehyde emissions and using NSCR.	i. Collecting the catalyst inlet temperature data according to § 63.6625(b); and ii. reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and iv. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
5. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Reduce formaldehyde emissions and not using NSCR.	i. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.

TABLE 6 TO SUBPART ZZZZ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS, OPERATING LIMITATIONS, WORK PRACTICES, AND MANAGEMENT PRACTICES—Continued

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
6. Non-emergency 4SRB stationary RICE with a brake HP ≥5,000 located at a major source of HAP.	a. Reduce formaldehyde emissions	Conducting semiannual performance tests for formaldehyde to demonstrate that the required formaldehyde percent reduction is achieved, or to demonstrate that the average reduction of emissions of THC determined from the performance test is equal to or greater than 30 percent.[a]
7. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP and new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit; [a] and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
8. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP and new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit; [a] and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
9. Existing emergency and black start stationary RICE ≤500 HP located at a major source of HAP, existing non-emergency stationary RICE <100 HP located at a major source of HAP, existing emergency and black start stationary RICE located at an area source of HAP, existing non-emergency stationary CI RICE ≤300 HP located at an area source of HAP, existing non-emergency 2SLB stationary RICE located at an area source of HAP, existing non-emergency stationary SI RICE located at an area source of HAP which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, existing non-emergency 4SLB and 4SRB stationary RICE ≤500 HP located at an area source of HAP, existing non-emergency 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that operate 24 hours or less per calendar year, and existing non-emergency 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that are remote stationary RICE.	a. Work or Management practices	i. Operating and maintaining the stationary RICE according to the manufacturer's emission-related operation and maintenance instructions; or ii. Develop and follow your own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions.

TABLE 6 TO SUBPART ZZZZ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS, OPERATING LIMITATIONS, WORK PRACTICES, AND MANAGEMENT PRACTICES—Continued

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
10. Existing stationary CI RICE >500 HP that are not limited use stationary RICE.	a. Reduce CO emissions, or limit the concentration of CO in the stationary RICE exhaust, and using oxidation catalyst.	i. Conducting performance tests every 8,760 hours or 3 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
11. Existing stationary CI RICE >500 HP that are not limited use stationary RICE.	a. Reduce CO emissions, or limit the concentration of CO in the stationary RICE exhaust, and not using oxidation catalyst.	i. Conducting performance tests every 8,760 hours or 3 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
12. Existing limited use CI stationary RICE >500 HP.	a. Reduce CO emissions or limit the concentration of CO in the stationary RICE exhaust, and using an oxidation catalyst.	i. Conducting performance tests every 8,760 hours or 5 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
13. Existing limited use CI stationary RICE >500 HP.	a. Reduce CO emissions or limit the concentration of CO in the stationary RICE exhaust, and not using an oxidation catalyst.	i. Conducting performance tests every 8,760 hours or 5 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and

TABLE 6 TO SUBPART ZZZZ OF PART 63—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS, OPERATING LIMITATIONS, WORK PRACTICES, AND MANAGEMENT PRACTICES—Continued

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
		ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
14. Existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are not remote stationary RICE and that are operated more than 24 hours per calendar year.	a. Install an oxidation catalyst	i. Conducting annual compliance demonstrations as specified in § 63.6640(c) to show that the average reduction of emissions of CO is 93 percent or more, or the average CO concentration is less than or equal to 47 ppmvd at 15 percent O_2; and either ii. Collecting the catalyst inlet temperature data according to § 63.6625(b), reducing these data to 4-hour rolling averages; and maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; or iii. Immediately shutting down the engine if the catalyst inlet temperature exceeds 1350 °F.
15. Existing non-emergency 4SRB stationary RICE >500 HP located at an area source of HAP that are not remote stationary RICE and that are operated more than 24 hours per calendar year.	a. Install NSCR	i. Conducting annual compliance demonstrations as specified in § 63.6640(c) to show that the average reduction of emissions of CO is 75 percent or more, or the average reduction of emissions of THC is 30 percent or more; and either ii. Collecting the catalyst inlet temperature data according to § 63.6625(b), reducing these data to 4-hour rolling averages; and maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; or iii. Immediately shutting down the engine if the catalyst inlet temperature exceeds 1250 °F.

[a] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

30. Table 7 to Subpart ZZZZ of Part 63 is revised to read as follows:

As stated in § 63.6650, you must comply with the following requirements for reports:

TABLE 7 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR REPORTS

For each . . .	You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Existing non-emergency, non-black start stationary RICE 100≤HP≤500 located at a major source of HAP; existing non-emergency, non-black start stationary CI RICE >500 HP located at a major source of HAP; existing non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP; existing non-emergency, non-black start stationary CI RICE >300 HP located at an area source of HAP; new or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP; and new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP.	Compliance report	a. If there are no deviations from any emission limitations or operating limitations that apply to you, a statement that there were no deviations from the emission limitations or operating limitations during the reporting period. If there were no periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in §63.8(c)(7), a statement that there were not periods during which the CMS was out-of-control during the reporting period; or.	i. Semiannually according to the requirements in §63.6650(b)(1)–(5) for engines that are not limited use stationary RICE subject to numerical emission limitations; and ii. Annually according to the requirements in §63.6650(b)(6)–(9) for engines that are limited use stationary RICE subject to numerical emission limitations.
		b. If you had a deviation from any emission limitation or operating limitation during the reporting period, the information in §63.6650(d). If there were periods during which the CMS, including CEMS and CPMS, was out-of-control, as specified in §63.8(c)(7), the information in §63.6650(e); or	i. Semiannually according to the requirements in §63.6650(b).
		c. If you had a malfunction during the reporting period, the information in §63.6650(c)(4).	i. Semiannually according to the requirements in §63.6650(b).
2. New or reconstructed non-emergency stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis.	Report	a. The fuel flow rate of each fuel and the heating values that were used in your calculations, and you must demonstrate that the percentage of heat input provided by landfill gas or digester gas, is equivalent to 10 percent or more of the gross heat input on an annual basis; and.	i. Annually, according to the requirements in §63.6650.
		b. The operating limits provided in your federally enforceable permit, and any deviations from these limits; and	i. See item 2.a.i.
		c. Any problems or errors suspected with the meters.	i. See item 2.a.i.
3. Existing non-emergency, non-black start 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that are not remote stationary RICE and that operate more than 24 hours per calendar year.	Compliance report	a. The results of the annual compliance demonstration, if conducted during the reporting period.	i. Semiannually according to the requirements in §63.6650(b)(1)–(5).

31. Appendix A to Subpart ZZZZ of Part 63 is added to read as follows:

Appendix A

Protocol for Using an Electrochemical Analyzer to Determine Oxygen and Carbon Monoxide Concentrations from Certain Engines

1.0 Scope and Application. What is this Protocol?

This protocol is a procedure for using portable electrochemical (EC) cells for measuring carbon monoxide (CO) and oxygen (O_2) concentrations in controlled and uncontrolled emissions from existing stationary 4-stroke lean burn and 4-stroke rich burn reciprocating internal combustion engines as specified in the applicable rule.

1.1 Analytes. What does this protocol determine?

This protocol measures the engine exhaust gas concentrations of carbon monoxide (CO) and oxygen (O_2).

Analyte	CAS No.	Sensitivity
Carbon monoxide (CO)	630–08–0	Minimum detectable limit should be 2 percent of the nominal range or 1 ppm, whichever is less restrictive.
Oxygen (O_2)	7782–44–7	

1.2 Applicability. When is this protocol acceptable?

This protocol is applicable to 40 CFR part 63, subpart ZZZZ. Because of inherent cross sensitivities of EC cells, you must not apply this protocol to other emissions sources without specific instruction to that effect.

1.3 Data Quality Objectives. How good must my collected data be?

Refer to Section 13 to verify and document acceptable analyzer performance.

1.4 Range. What is the targeted analytical range for this protocol?

The measurement system and EC cell design(s) conforming to this protocol will determine the analytical range for each gas component. The nominal ranges are defined by choosing up-scale calibration gas concentrations near the maximum anticipated flue gas concentrations for CO and O_2, or no more than twice the permitted CO level.

1.5 Sensitivity. What minimum detectable limit will this protocol yield for a particular gas component?

The minimum detectable limit depends on the nominal range and resolution of the specific EC cell used, and the signal to noise ratio of the measurement system. The minimum detectable limit should be 2 percent of the nominal range or 1 ppm, whichever is less restrictive.

2.0 Summary of Protocol

In this protocol, a gas sample is extracted from an engine exhaust system and then conveyed to a portable EC analyzer for measurement of CO and O_2 gas concentrations. This method provides measurement system performance specifications and sampling protocols to ensure reliable data. You may use additions to, or modifications of vendor supplied measurement systems (*e.g.,* heated or unheated sample lines, thermocouples, flow meters, selective gas scrubbers, etc.) to meet the design specifications of this protocol. Do not make changes to the measurement system from the as-verified configuration (Section 3.12).

3.0 Definitions

3.1 Measurement System. The total equipment required for the measurement of CO and O_2 concentrations. The measurement system consists of the following major subsystems:

3.1.1 Data Recorder. A strip chart recorder, computer or digital recorder for logging measurement data from the analyzer output. You may record measurement data from the digital data display manually or electronically.

3.1.2 Electrochemical (EC) Cell. A device, similar to a fuel cell, used to sense the presence of a specific analyte and generate an electrical current output proportional to the analyte concentration.

3.1.3 Interference Gas Scrubber. A device used to remove or neutralize chemical compounds that may interfere with the selective operation of an EC cell.

3.1.4 Moisture Removal System. Any device used to reduce the concentration of moisture in the sample stream so as to protect the EC cells from the damaging effects of condensation and to minimize errors in measurements caused by the scrubbing of soluble gases.

3.1.5 Sample Interface. The portion of the system used for one or more of the following: sample acquisition; sample transport; sample conditioning or protection of the EC cell from any degrading effects of the engine exhaust effluent; removal of particulate matter and condensed moisture.

3.2 Nominal Range. The range of analyte concentrations over which each EC cell is operated (normally 25 percent to 150 percent of up-scale calibration gas value). Several nominal ranges can be used for any given cell so long as the calibration and repeatability checks for that range remain within specifications.

3.3 Calibration Gas. A vendor certified concentration of a specific analyte in an appropriate balance gas.

3.4 Zero Calibration Error. The analyte concentration output exhibited by the EC cell in response to zero-level calibration gas.

3.5 Up-Scale Calibration Error. The mean of the difference between the analyte concentration exhibited by the EC cell and the certified concentration of the up-scale calibration gas.

3.6 Interference Check. A procedure for quantifying analytical interference from components in the engine exhaust gas other than the targeted analytes.

3.7 Repeatability Check. A protocol for demonstrating that an EC cell operated over a given nominal analyte concentration range provides a stable and consistent response and is not significantly affected by repeated exposure to that gas.

3.8 Sample Flow Rate. The flow rate of the gas sample as it passes through the EC cell. In some situations, EC cells can experience drift with changes in flow rate. The flow rate must be monitored and documented during all phases of a sampling run.

3.9 Sampling Run. A timed three-phase event whereby an EC cell's response rises and plateaus in a sample conditioning phase, remains relatively constant during a measurement data phase, then declines during a refresh phase. The sample conditioning phase exposes the EC cell to the gas sample for a length of time sufficient to reach a constant response. The measurement data phase is the time interval during which gas sample measurements can be made that meet the acceptance criteria of this protocol. The refresh phase then purges the EC cells with CO-free air. The refresh phase replenishes requisite O_2 and moisture in the electrolyte reserve and provides a mechanism to de-gas or desorb any interference gas scrubbers or filters so as to enable a stable CO EC cell response. There are four primary types of sampling runs: Pre-sampling calibrations; stack gas sampling; post-sampling calibration checks; and measurement system repeatability checks. Stack gas sampling runs can be chained together for extended evaluations, providing all other procedural specifications are met.

3.10 Sampling Day. A time not to exceed twelve hours from the time of the pre-sampling calibration to the post-sampling calibration check. During this time, stack gas sampling runs can be repeated without repeated recalibrations, providing all other sampling specifications have been met.

3.11 Pre-Sampling Calibration/Post-Sampling Calibration Check. The protocols executed at the beginning and end of each sampling day to bracket measurement readings with controlled performance checks.

3.12 Performance-Established Configuration. The EC cell and sampling system configuration that existed at the time that it initially met the performance requirements of this protocol.

4.0 Interferences

When present in sufficient concentrations, NO and NO_2 are two gas species that have been reported to interfere with CO concentration measurements. In the likelihood of this occurrence, it is the protocol user's responsibility to employ and properly maintain an appropriate CO EC cell filter or scrubber for removal of these gases, as described in Section 6.2.12.

5.0 Safety. [Reserved]

6.0 Equipment and Supplies

6.1 What equipment do I need for the measurement system?

The system must maintain the gas sample at conditions that will prevent moisture condensation in the sample transport lines, both before and as the sample gas contacts the EC cells. The essential components of the measurement system are described below.

6.2 Measurement System Components

6.2.1 Sample Probe. A single extraction-point probe constructed of glass, stainless steel or other non-reactive material, and of length sufficient to reach any designated sampling point. The sample probe must be designed to prevent plugging due to condensation or particulate matter.

6.2.2 Sample Line. Non-reactive tubing to transport the effluent from the sample probe to the EC cell.

6.2.3 Calibration Assembly (optional). A three-way valve assembly or equivalent to introduce calibration gases at ambient pressure at the exit end of the sample probe during calibration checks. The assembly must be designed such that only stack gas or calibration gas flows in the sample line and all gases flow through any gas path filters.

6.2.4 Particulate Filter (optional). Filters before the inlet of the EC cell to prevent accumulation of particulate material in the measurement system and extend the useful life of the components. All filters must be fabricated of materials that are non-reactive to the gas mixtures being sampled.

6.2.5 Sample Pump. A leak-free pump to provide undiluted sample gas to the system at a flow rate sufficient to minimize the response time of the measurement system. If located upstream of the EC cells, the pump must be constructed of a material that is non-reactive to the gas mixtures being sampled.

6.2.8 Sample Flow Rate Monitoring. An adjustable rotameter or equivalent device used to adjust and maintain the sample flow rate through the analyzer as prescribed.

6.2.9 Sample Gas Manifold (optional). A manifold to divert a portion of the sample gas stream to the analyzer and the remainder to a by-pass discharge vent. The sample gas manifold may also include provisions for introducing calibration gases directly to the analyzer. The manifold must be constructed of a material that is non-reactive to the gas mixtures being sampled.

6.2.10 EC cell. A device containing one or more EC cells to determine the CO and O_2 concentrations in the sample gas stream. The EC cell(s) must meet the applicable performance specifications of Section 13 of this protocol.

6.2.11 Data Recorder. A strip chart recorder, computer or digital recorder to make a record of analyzer output data. The data recorder resolution (*i.e.,* readability) must be no greater than 1 ppm for CO; 0.1 percent for O_2; and one degree (either °C or °F) for temperature. Alternatively, you may use a digital or analog meter having the same resolution to observe and manually record the analyzer responses.

6.2.12 Interference Gas Filter or Scrubber. A device to remove interfering compounds upstream of the CO EC cell. Specific interference gas filters or scrubbers used in the performance-established configuration of the analyzer must continue to be used. Such a filter or scrubber must have a means to determine when the removal agent is exhausted. Periodically replace or replenish it in accordance with the manufacturer's recommendations.

7.0 Reagents and Standards. What calibration gases are needed?

7.1 Calibration Gases. CO calibration gases for the EC cell must be CO in nitrogen or CO in a mixture of nitrogen and O_2. Use CO calibration gases with labeled concentration values certified by the manufacturer to be within ± 5 percent of the label value. Dry ambient air (20.9 percent O_2) is acceptable for calibration of the O_2 cell. If needed, any lower percentage O_2 calibration gas must be a mixture of O_2 in nitrogen.

7.1.1 Up-Scale CO Calibration Gas Concentration. Choose one or more up-scale gas concentrations such that the average of the stack gas measurements for each stack gas sampling run are between 25 and 150 percent of those concentrations. Alternatively, choose an up-scale gas that does not exceed twice the concentration of the applicable outlet standard. If a measured gas value exceeds 150 percent of the up-scale CO calibration gas value at any time during the stack gas sampling run, the run must be discarded and repeated.

7.1.2 Up-Scale O_2 Calibration Gas Concentration. Select an O_2 gas concentration such that the difference between the gas concentration and the average stack gas measurement or reading for each sample run is less than 15 percent O_2. When the average exhaust gas O_2 readings are above 6 percent, you may use dry ambient air (20.9 percent O_2) for the up-scale O_2 calibration gas.

7.1.3 Zero Gas. Use an inert gas that contains less than 0.25 percent of the up-scale CO calibration gas concentration. You may use dry air that is free from ambient CO and other combustion gas products (*e.g.,* CO_2).

8.0 Sample Collection and Analysis

8.1 Selection of Sampling Sites

8.1.1 Control Device Inlet. Select a sampling site sufficiently downstream of the engine so that the combustion gases should be well mixed. Use a single sampling extraction point near the center of the duct (*e.g.,* within the 10 percent centroidal area), unless instructed otherwise.

8.1.2 Exhaust Gas Outlet. Select a sampling site located at least two stack diameters downstream of any disturbance (*e.g.,* turbocharger exhaust, crossover junction or recirculation take-off) and at least one-half stack diameter upstream of the gas discharge to the atmosphere. Use a single sampling extraction point near the center of the duct (*e.g.,* within the 10 percent centroidal area), unless instructed otherwise.

8.2 Stack Gas Collection and Analysis. Prior to the first stack gas sampling run, conduct the pre-sampling calibration in accordance with Section 10.1. Use Figure 1 to record all data. Zero the analyzer with zero gas. Confirm and record that the scrubber media color is correct and not exhausted. Then position the probe at the sampling point and begin the sampling run at the same flow rate used during the up-scale calibration. Record the start time. Record all EC cell output responses and the flow rate during the ''sample conditioning phase'' once per minute until constant readings are obtained. Then begin the ''measurement data phase'' and record readings every 15 seconds for at least two minutes (or eight readings), or as otherwise required to achieve two continuous minutes of data that meet the specification given in Section 13.1. Finally, perform the ''refresh phase'' by introducing dry air, free from CO and other combustion gases, until several minute-to-minute readings of consistent value have been obtained. For each run use the ''measurement data phase'' readings to calculate the average stack gas CO and O_2 concentrations.

8.3 EC Cell Rate. Maintain the EC cell sample flow rate so that it does not vary by more than ± 10 percent throughout the pre-sampling calibration, stack gas sampling and post-sampling calibration check. Alternatively, the EC cell sample flow rate can be maintained within a tolerance range that does not affect the gas concentration readings by more than ± 3 percent, as instructed by the EC cell manufacturer.

9.0 Quality Control (Reserved)

10.0 Calibration and Standardization

10.1 Pre-Sampling Calibration. Conduct the following protocol once for each nominal range to be used on each EC cell before performing a stack gas sampling run on each field sampling day. Repeat the calibration if you replace an EC cell before completing all of the sampling runs. There is no prescribed order for calibration of the EC cells; however, each cell must complete the measurement data phase during calibration. Assemble the measurement system by following the manufacturer's recommended protocols including for preparing and preconditioning the EC cell. Assure the measurement system has no leaks and verify the gas scrubbing agent is not depleted. Use Figure 1 to record all data.

10.1.1 Zero Calibration. For both the O_2 and CO cells, introduce zero gas to the measurement system (*e.g.,* at the calibration assembly) and record the concentration reading every minute until readings are constant for at least two consecutive minutes. Include the time and sample flow rate. Repeat the steps in this section at least once to verify the zero calibration for each component gas.

10.1.2 Zero Calibration Tolerance. For each zero gas introduction, the zero level output must be less than or equal to ± 3 percent of the up-scale gas value or ± 1 ppm, whichever is less restrictive, for the CO channel and less than or equal to ± 0.3 percent O_2 for the O_2 channel.

10.1.3 Up-Scale Calibration. Individually introduce each calibration gas to the measurement system (*e.g.,* at the calibration assembly) and record the start time. Record all EC cell output responses and the flow rate during this ''sample conditioning phase'' once per minute until readings are constant for at least two minutes. Then begin the ''measurement data phase'' and record readings every 15 seconds for a total of two minutes, or as otherwise required. Finally, perform the ''refresh phase'' by introducing dry air, free from CO and other combustion gases, until readings are constant for at least two consecutive minutes. Then repeat the steps in this section at least once to verify the calibration for each component gas.

Introduce all gases to flow through the entire sample handling system (*i.e.,* at the exit end of the sampling probe or the calibration assembly).

10.1.4 Up-Scale Calibration Error. The mean of the difference of the ''measurement data phase'' readings from the reported standard gas value must be less than or equal to ± 5 percent or ± 1 ppm for CO or ± 0.5 percent O_2, whichever is less restrictive, respectively. The maximum allowable deviation from the mean measured value of any single ''measurement data phase'' reading must be less than or equal to ± 2 percent or ± 1 ppm for CO or ± 0.5 percent O_2, whichever is less restrictive, respectively.

10.2 Post-Sampling Calibration Check. Conduct a stack gas post-sampling calibration check after the stack gas sampling run or set of runs and within 12 hours of the initial calibration. Conduct up-scale and zero calibration checks using the protocol in Section 10.1. Make no changes to the sampling system or EC cell calibration until all post-sampling calibration checks have been recorded. If either the zero or up-scale calibration error exceeds the respective specification in Sections 10.1.2 and 10.1.4 then all measurement data collected since the previous successful calibrations are invalid and re-calibration and re-sampling are required. If the sampling system is disassembled or the EC cell calibration is adjusted, repeat the calibration check before conducting the next analyzer sampling run.

11.0 Analytical Procedure

The analytical procedure is fully discussed in Section 8.

12.0 Calculations and Data Analysis

Determine the CO and O_2 concentrations for each stack gas sampling run by calculating the mean gas concentrations of the data recorded during the ''measurement data phase''.

13.0 Protocol Performance

Use the following protocols to verify consistent analyzer performance during each field sampling day.

13.1 Measurement Data Phase Performance Check. Calculate the mean of the readings from the ''measurement data phase''. The maximum allowable deviation from the mean for each of the individual readings is ± 2 percent, or ± 1 ppm, whichever is less restrictive. Record the mean value and maximum deviation for each gas monitored. Data must conform to Section 10.1.4. The EC cell flow rate must conform to the specification in Section 8.3.

Example: A measurement data phase is invalid if the maximum deviation of any single reading comprising that mean is greater than ± 2 percent or ± 1 ppm (the default criteria). For example, if the mean = 30 ppm, single readings of below 29 ppm and above 31 ppm are disallowed).

13.2 Interference Check. Before the initial use of the EC cell and interference gas scrubber in the field, and semi-annually thereafter, challenge the interference gas scrubber with NO and NO_2 gas standards that are generally recognized as representative of diesel-fueled engine NO and NO_2 emission values. Record the responses displayed by the CO EC cell and other pertinent data on Figure 1 or a similar form.

13.2.1 Interference Response. The combined NO and NO_2 interference response should be less than or equal to ± 5 percent of the up-scale CO calibration gas concentration.

13.3 Repeatability Check. Conduct the following check once for each nominal range that is to be used on the CO EC cell within five days prior to each field sampling program. If a field sampling program lasts longer than five days, repeat this check every five days. Immediately repeat the check if the EC cell is replaced or if the EC cell is exposed to gas concentrations greater than 150 percent of the highest up-scale gas concentration.

13.3.1 Repeatability Check Procedure. Perform a complete EC cell sampling run (all three phases) by introducing the CO calibration gas to the measurement system and record the response. Follow Section 10.1.3. Use Figure 1 to record all data. Repeat the run three times for a total of four complete runs. During the four repeatability check runs, do not adjust the system except where necessary to achieve the correct calibration gas flow rate at the analyzer.

13.3.2 Repeatability Check Calculations. Determine the highest and lowest average ''measurement data phase'' CO concentrations from the four repeatability check runs and record the results on Figure 1 or a similar form. The absolute value of the difference between the maximum and minimum average values recorded must not vary more than ± 3 percent or ± 1 ppm of the up-scale gas value, whichever is less restrictive.

14.0 Pollution Prevention (Reserved)

15.0 Waste Management (Reserved)

16.0 Alternative Procedures (Reserved)

17.0 References

(1) ''Development of an Electrochemical Cell Emission Analyzer Test Protocol'', Topical Report, Phil Juneau, Emission Monitoring, Inc., July 1997.

(2) ''Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Emissions from Natural Gas-Fired Engines, Boilers, and Process Heaters Using Portable Analyzers'', EMC Conditional Test Protocol 30 (CTM–30), Gas Research Institute Protocol GRI–96/0008, Revision 7, October 13, 1997.

(3) ''ICAC Test Protocol for Periodic Monitoring'', EMC Conditional Test Protocol 34 (CTM–034), The Institute of Clean Air Companies, September 8, 1999.

(4) ''Code of Federal Regulations'', Protection of Environment, 40 CFR, Part 60, Appendix A, Methods 1–4; 10.

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Table 1: Appendix A - Sampling Run Data.

Facility_____ Engine I.D._____ Date_____

Run Type: (X) (__) Pre-Sample Calibration (__) Stack Gas Sample (__) Post-Sample Cal. Check (__) Repeatability Check

Run #	1	1	2	2	3	3	4	4	Time	Scrub. OK	Flow-Rate
Gas	O_2	CO	O_2	CO	O_2	CO	O_2	CO			
Sample Cond. Phase											
"											
"											
"											
"											
Measure-ment Data Phase											
"											
"											
"											
"											
"											
"											
"											
"											
"											
"											
Mean											
Refresh Phase											
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Part III

Department of Homeland Security

Coast Guard

46 CFR Parts 25, 27, 28, *et al.*
Carbon Dioxide Fire Suppression Systems on Commerical Vessels; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 25, 27, 28, 31, 34, 35, 62, 71, 76, 78, 91, 95, 97, 107, 108, 112, 115, 118, 119, 122, 131, 132, 147, 162, 167, 169, 176, 181, 182, 185, 189, 190, 193, 194, and 196

[USCG–2006–24797]

RIN 1625–AB44

Carbon Dioxide Fire Suppression Systems on Commercial Vessels

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the current regulations for fire suppression systems on several classes of commercial vessels. The amendments clarify that approved alternatives to carbon dioxide systems may be used to protect some spaces on these vessels, and set general requirements for alternative systems. Additionally, certain new carbon dioxide systems must be equipped with lockout valves and odorizing units to protect persons after a carbon dioxide discharge. By requiring these features on carbon dioxide systems and by making a wider range of fire suppression systems available, the regulations advance the Coast Guard's strategic goals of promoting marine safety and maritime mobility.

DATES: This final rule is effective July 9, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on July 9, 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–2006–24797 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2006–24797 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Suzanne Hemann, CG–5214; telephone 202–372–1356, email *Suzanne.E.Hemann@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
EPA U.S. Environmental Protection Agency
FR **Federal Register**
FSS IMO's International Code for Fire Systems Safety
IMO International Maritime Organization
MODU Mobile offshore drilling unit
MSC Coast Guard Marine Safety Center
NEPA National Environmental Policy Act of 1969
NFPA National Fire Protection Association
NPRM Notice of proposed rulemaking
NTTAA The National Technology Transfer and Advancement Act
OMB Office of Management and Budget
SOLAS 74 International Convention for the Safety of Life at Sea, 1974
TSAC Towing Safety Advisory Committee
UL Underwriters Laboratory
U.S.C. United States Code

II. Regulatory History

On February 24, 2010, we published a notice of proposed rulemaking entitled ''Carbon Dioxide Fire Suppression Systems on Commercial Vessels'' in the **Federal Register** (75 FR 8432). We received 18 comments on the proposed rule. No public meeting was held.

III. Basis and Purpose

The basis of this final rule is the Secretary of Homeland Security's regulatory authority under the following statutes. In all cases, the Secretary has delegated this authority to the Coast Guard through Delegation No. 0170.1(92). Section 3306 of Title 46, United States Code (U.S.C.) mandates the issuance of vessel equipment regulations for Coast Guard-inspected vessels and the issuance of structural fire protection regulations for small passenger vessels; 46 U.S.C. 3703 mandates regulations, including fire protection regulations, for vessels carrying liquid bulk dangerous cargoes; 46 U.S.C. 4102 authorizes regulations, after consultation with the Towing Safety Advisory Committee (TSAC), for fire protection and suppression measures on towing vessels; 46 U.S.C. 4302 authorizes safety equipment regulations for recreational vessels; and 46 U.S.C. 4502 mandates fire extinguisher regulations for some uninspected commercial fishing vessels and authorizes safety equipment regulations for certain other uninspected commercial fishing vessels.

The purpose of this final rule is to advance the Coast Guard's strategic goals of marine safety and maritime mobility, by clarifying and codifying the requirements for fire suppression systems that use carbon dioxide (CO_2) alternatives, and by requiring lockout valves and odorizers to improve safety on certain vessels that use carbon dioxide fire suppression systems.

IV. Background

This discussion is adapted from Parts III and IV of our NPRM. See 75 FR 8432, 8433.

Carbon dioxide (CO_2) systems are suitable for suppressing or extinguishing fires in certain vessel spaces. They work by flooding spaces with CO_2. CO_2 flooding deprives a fire of the oxygen it needs to burn, but these same systems have also killed people on U.S. military vessels and foreign flag vessels who were in CO_2-protected spaces when the odorless CO_2 gas was discharged accidentally, or without adequate warning to evacuate. This final rule addresses that risk by requiring lockout valves (''lockouts'') and odorizing units (''odorizers'') for most new CO_2 systems, specifically those installed or altered after July 9, 2013. (''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.)

New CO_2 systems protecting spaces containing more than 6,000 cubic feet will need lockout valves. The lockout must be locked in the ''off'' position during maintenance or testing of a CO_2 system, to prevent its accidental discharge during those times of heightened risk to personnel.

All new CO_2 systems will need odorizers. In the event of a discharge, the odorizer will inject a wintergreen scent that will linger as long as harmful amounts of the discharged gas are present, to alert personnel to that presence.

Existing Coast Guard regulations require CO_2 systems in certain spaces on towing vessels, tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units (MODUs), offshore supply vessels, public nautical school ships, and large passenger vessels (''Subchapter H'' vessels); we allow their use on smaller ''Subchapter K'' and ''Subchapter T'' passenger vessels as well. In recent years, fixed extinguishing systems using ''clean agents'' have been developed that are comparable to CO_2 systems in their ability to suppress fires, but that do not pose the same risks to persons onboard. We would like to spread public awareness that these alternatives exist. We have approved many alternative systems as ''regulatory equivalents'' to CO_2 systems, but the process for requesting and granting an equivalency determination can be burdensome and time-consuming both for regulated entities and for the Coast Guard. We want to update our regulations so that the clean agent systems we have routinely been approving can be used by regulated entities to comply with Coast Guard fire suppression requirements, without the need for obtaining individual equivalency determinations. This should reduce regulatory burden and potentially increase the use of these alternative systems.

The following table lists the parts within 46 CFR that are affected by the final rule and the specific sections we are amending. The foregoing discussion provides a general summary of the changes. When additional information is required, it appears in the table in parentheses. The table omits any discussion of numerous minor and non-substantive style, format, or wording changes that we are proposing solely to improve the clarity of our regulations.

TABLE 1—CHANGES TO 46 CFR

46 CFR part and topic	46 CFR sections affected (& comments)
25—Uninspected vessels	25.30–1 (preemption; see part VII.E of this preamble), 25.30–15 (remove paragraph designations and remove redundant second paragraph).
27—Towing vessels	27.100 (preemption; see part VII.E of this preamble), 27.101.
28—Commercial fishing industry vessels	28.30 (preemption; see part VII.E of this preamble), 28.825.
31, 34, 35—Tank vessels	31.01–1 (preemption; see part VII.E of this preamble), 31.10–18 (remove flow test requirement in para. (f)), 34.01–1 (preemption), 34.01–15 (incorporation by reference), 34.05–5, 34.15–50 (new), 34.15–60 (new), 35.01–2 (new; preemption), 35.40–7, 35.40–8 (new), 35.40–10.
62—Marine engineering, vital systems automation.	62.01–1 (preemption; see part VII.E of this preamble), 62.25–20.
71, 76, 78—Subchapter H passenger vessels (>/=100 gross tons).	71.01–1/71.01–2 (new/redesignation; preemption; see part VII.E of this preamble), 71.20–20, 71.25–20, 71.65–5, 76.01–1 (preemption), 76.05–1, 76.10–5, 76.15–50 (new), 76.16–60 (new), 78.01–1 (preemption), 78.47–9, 78–47.11 (new), 78.47–17.
91, 95, 97—Cargo & miscellaneous vessels	91.01–1/91.01–2 (new/redesignation; preemption; see part VII.E of this preamble), 91.20–20, 91.25–20, 91.55–5, 95.01–1 (preemption), 95.01–2 (incorporation by reference), 95.05–10, 95.10–5, 95.15–5 (lengthen discharge time from 2 to 10 min. for spaces specially suitable for vehicles to provide greater safety margin and meet the International Maritime Organization's Safety of Life at Sea (SOLAS) requirements), 95.15–30 (provide for nitrogen pilot cylinders), 95.15–50 (new), 95.15–60 (new), 95.16–1—95.16–90 (new; based on current subpart 95.15, modified and reorganized), 97.01–1 (preemption), 97.37–9, 97.37–11 (new), 97.37–13.
107, 108—Mobile offshore drilling units	107.01–1 (preemption; see part VII.E of this preamble), 107.231, 107.235, 108.102 (new; preemption), 108.444 (new), 108.446 (new), 108.626 (new), 108.627 , 108.631.
112—Electrical engineering, emergency lighting & power systems.	112.05–1 (preemption; see part VII.E of this preamble), 112.15–5.
115, 118, 119, 122—Subchapter K passenger vessels (<100 gross tons & >150 passengers or >49 overnight passengers).	115.1 (new; preemption; see part VII.E of this preamble), 115.810, 118.115 (preemption), 118.410, 119.100 (preemption), 119.710, 122.115 (preemption), 122.612.
131, 132—Offshore supply vessels	131.100 (new; preemption; see part VII.E of this preamble), 131.815, 131.817 (new), 131.825, 132.100 (preemption), 132.350.
147—Hazardous ships' stores	147.1 (preemption; see part VII.E of this preamble), 147.7 (incorporation by reference), 147.45 (non-substantive change), 147.60 (non-substantive change), 147.66 (new), 147.67 (new).
162—Engineering equipment	162.017–1 (preemption; see part VII.E of this preamble), 162.161–1—162.161–9 (new).
167—Public nautical school ships	167.01–5 (preemption; see part VII.E of this preamble), 167.45–1, 167.45–45, 167.55–5.
169—Sailing school vessels	169.101 (preemption; see part VII.E of this preamble), 169.247, 169.564, 169.570 (new), 169.571 (new), 169.732, 169.734.
176, 181, 182, 185—Subchapter T passenger vessels (<100 gross tons & </=150 passengers or </=49 passengers overnight).	176.1 (new; preemption; see part VII.E of this preamble), 176.810, 181.115 (preemption), 181.410, 182.115 (preemption), 182.710, 185.115 (preemption), 185.612.
189, 190, 193, 194, 196—Oceanographic research vessels.	189.01–1/189.01–2 (new/redesignation; preemption; see part VII.E of this preamble), 189.25–20, 189.55–5, 190.00–1 (new; preemption), 190.15–5, 193.01–1 (preemption), 193.05–10, 193.10–5, 193.15–16 (new), 193.15–17 (new), 193.15–50 (new), 194.01–1 (preemption), 194.20–7, 196.01–1 (preemption), 196.37–8 (new), 196.37–9, 196.37–13.

V. Discussion of Comments and Changes

We received 18 written comments from 17 sources (one commenter provided duplicate comments). Of the 17 commenters, seven were individuals or firms that operate vessels, four were trade groups associated with vessel operators, two represented other businesses, one was a fire protection association, one was from an individual employed by a Federal agency, and two did not indicate any particular affiliation. One of the commenters requested a public meeting to discuss the NPRM; we did not grant that request because it was unsupported by any discussion of how a meeting might be beneficial.

We also received one comment almost a year after the close of the comment

period. The commenter, a manufacturer, said our regulations should allow electric release clean agent fire suppression systems in addition to manual and pneumatic release systems. Although we are not required to respond to late comments, in this case we acknowledge the merit of the suggestion and will consider it either in a future rulemaking or as a type of system we could approve as providing safety equivalent to systems meeting regulatory requirements.

Scope of the rule. Three commenters asked questions about or commented on the scope of this rulemaking. One expressed the hope that it is not intended to force companies to remove existing fixed carbon dioxide systems and install inferior semi-portable fire extinguishers, which the commenter regarded as less safe than fixed systems. We are not requiring the removal of any existing system. We are providing a regulatory structure for CO_2 alternative (clean agent) systems, and requiring some minimal protective measures for new CO_2 systems.

A second commenter inferred that a carbon dioxide lockout would need to be activated even at times when the CO_2 system is not undergoing maintenance. Our intention is for the lockout only to be activated when the CO_2 system is being tested or maintained, and we have modified the regulatory text to make this clearer.

The second commenter also asked questions about our proposed lockout exception for spaces smaller than 6,000 cubic feet. In the NPRM, we proposed limiting that exception to those small spaces that provide a means of horizontal escape, like spaces with walk-in/walk-out access. We have decided, for the final rule, to extend the exception to all spaces smaller than 6,000 cubic feet, whether or not they provide horizontal escape routes. Not all small spaces provide walk-in/walk-out access, but in most cases the small space is protected by a CO_2 system that protects that space alone. The arrangements for these systems are generally less complex as they serve only one space, and are thus, less likely to discharge inadvertently during system maintenance and testing.

The third commenter asked if we intend for the rule to apply to foreign-flagged mobile offshore drilling units (MODUs) operating on the U.S. Outer Continental Shelf under a U.S. Certificate of Compliance. This commenter said it would be problematic to apply U.S. type approvals to non-U.S. manufactured carbon dioxide systems on foreign-flagged MODUs. Under 33 CFR 143.207, a MODU documented under the laws of a foreign nation has a choice of design and equipment standards with which it must comply when operating on the U.S. Outer Continental Shelf. It may comply with Coast Guard regulations in 46 CFR part 108, which, as amended by this final rule, include the lockout and odorizer requirements for CO_2 systems. It may comply with the documenting nation's standards, if it applies for and receives a Coast Guard determination that those standards provide an equivalent or greater level of safety. In the case of CO_2 system lockout and odorizer requirements, an equivalency determination may be given after an applicant demonstrates that the foreign nation's standards require some type of lockout and odorizer or alternative means of providing an equivalent level of safety, though they need not be Coast Guard-approved equipment. Finally, the foreign MODU may comply with the International Maritime Organization's Code for Construction and Equipment of Mobile Offshore Drilling Units, which does not require lockouts or odorizers for CO_2 systems.

Need for the rule. Ten commenters questioned the need for various aspects of this rule. Four commenters questioned the overall need, focusing primarily on the lockout and odorizer requirements. Typical of these four commenters was the remark: ''retrofitting the numerous and extremely diverse vessel population this rule would impact would be much more costly than [the Coast Guard's] analysis indicates and would provide a marginal safety advantage, if any.'' In the NPRM, we proposed applying those requirements to all vessels, which would have required retrofitting for existing vessels. In the final rule, we have eliminated the provisions that would have required retrofitting, thereby significantly reducing costs and eliminating the disagreement raised by this commenter. Seven commenters said we had failed to demonstrate a need for lockouts, and five said we failed to show the need for odorizers. Many pointed out that lockouts would not have prevented many of the reported carbon dioxide-related casualties in recent years, and that we cited no studies to show that odorizers would provide better protection than the audible and visual alarms that already protect most vessels.

In response to these comments, we will not require the retrofitting of existing CO_2 systems, but we will apply the lockout and odorizer requirements only to new CO_2 systems regardless of vessel class. Although we have only limited casualty data for some vessel classes, we think the risk of inadvertent CO_2 system discharge is common to all classes and requires a uniform regulatory approach. Furthermore, while alarms provide advance warning of an imminent discharge, they do not provide similar protection after a discharge when pockets of CO_2 can pose a serious risk of fatality. Similarly, lockouts provide better protection than alarms in scenarios where evacuation is not feasible despite the advance warning provided by alarms.

We acknowledge that our lockout and odorizer requirements may not eliminate the risk of casualties related to CO_2 exposure, but we believe they will reduce that risk. CO_2 exposure is a potential health hazard recognized by government agencies like the National Institute of Occupational Safety and Health (see their publication NIOSH 76–194, ''Criteria for a Recommended Standard—Occupational Exposure to Carbon Dioxide,'' available at *http://www.cdc.gov/niosh/76-194.html*) and the Environmental Protection Agency (EPA), and by industry groups like the National Fire Prevention Association (NFPA). Internationally, 19 incidents since 1980, involving 55 deaths and at least 29 injuries, indicate the reality and extent of the risk with respect to marine CO_2 fire suppression systems. To the extent U.S. vessels are equipped with those systems, we think they share in that risk.

Two commenters questioned the need for lockout or odorizer requirements on passenger or towing vessels, which are already required by Coast Guard regulations to have central alarms that sound in advance of a carbon dioxide discharge. Lockouts and odorizers provide protection that alarms and discharge delays cannot. The lockout is a positive control to prevent discharge into protected spaces during maintenance and testing, when any other safety control or method may be turned off or potentially misaligned. Unlike alarms, odorizers are not primarily intended to notify persons who are in a protected space when CO_2 is inadvertently discharged. The odor allows crewmembers to positively identify where the gas has lingered in protected spaces or migrated to other spaces after an intentional or inadvertent release. This is important, as CO_2 gas is heavier than air and can easily migrate or collect in unanticipated areas even after the spaces have been ventilated naturally or mechanically.

Alternative systems. Five commenters addressed our proposals for CO_2 alternative fire protection systems. One of the five said that if there are safer

alternatives that work as well as carbon dioxide, ''those systems ought to be considered and offered as options.'' The other four generally agreed with the comment that recognition of ''other clean agent systems appears to be overdue and should go forward.'' We agree with these comments.

One commenter, an EPA employee, recommended limiting the use of carbon dioxide systems in new installations. Another commenter recommended incorporating the 2010 version of NFPA 13, a standard for sprinkler systems, in 46 CFR part 34, instead of the 1996 edition that we currently incorporate by reference, and also recommended incorporating NFPA standards for water mist, spray, and foam fire suppression systems. These recommendations are beyond the scope of this rulemaking, and not necessary to reach our regulatory goals of providing protective measures where CO_2 systems are used and a regulatory structure for CO_2 alternative (clean agent) fire suppression systems.

Lockouts. Twelve commenters addressed the NPRM's proposed requirement for lockouts on carbon dioxide systems. One of these acknowledged that lockouts could be useful when persons unfamiliar with a vessel perform maintenance on the CO_2 system. Two commenters agreed with our proposal, one of them pointing out that lockouts ''are widely used low-cost methods for reducing the risk to personnel in spaces protected with carbon dioxide.''

Four commenters questioned the need for, or effectiveness of, lockouts. Three of the four said vessel operators already use rigorous procedures, sirens, and strobe lights to warn personnel in the event of a carbon dioxide discharge. The fourth pointed out that, during CO_2 system maintenance, a trained and certified manufacturer's representative should always be present to ensure that written safety protocols are observed, and that the crew should verify compliance with those protocols. In his view, therefore, lockouts are not needed. Our position is that lockouts provide protection that the measures cited by these commenters cannot. The lockout valves are intended to provide protection during repair and maintenance procedures to the system, preventing an accidental discharge with a positively closed valve, whereas existing measures simply warn of an impending accidental (or intentional) discharge. There are many ways in which a CO_2 system can discharge inadvertently during maintenance and testing. Because each system is uniquely engineered and arranged to suit the space it protects, even experienced technicians may be unfamiliar with a system designed to protect multiple spaces with multiple actuation methods and locations. The lockout gives the master or person-in-charge an ultimate, positive control to prevent discharge into protected spaces at a time when any other safety controls may be turned off or potentially misaligned.

Five commenters said the lockout requirement might have unintended adverse consequences. A typical comment from these five said that personnel might fail to reopen the lockout once the need for closing the CO_2 system ends, and that this failure might not be noticed until a fire triggers the need for the CO_2 system to discharge. The commenter contrasted that possibility with electrical systems, where inadvertent failure to reopen a lockout would result in continued disruption of electrical service and would be noticed immediately. Turning the valve on and off each time a crewmember enters a protected space is not the intended use of the valve. Our regulatory text now clarifies that the lockout is to close the system only during system maintenance and testing, and that the master or person-in-charge must ensure that the valve is locked open when maintenance or testing is completed. Finally, we will ensure that when we review a manufacturer's maintenance manual, we verify that using and unlocking the lockout valve is discussed in the manual's maintenance procedures. Such procedures have proven to be effective where CO_2 lockout valves have been used.

Another commenter suggested that, instead of requiring the master to ensure that a carbon dioxide system is returned to service after maintenance, we should require ''a lockout/tag-out system, which is a more generally accepted method to ensure that each valve * * * is correctly positioned after maintenance.'' We support, but do not require, the use of lockout/tag-out systems, and believe we achieve similar protection by requiring the lockout design or locking mechanism to make it obvious whether the valve is open or closed.

Four commenters suggested alternatives or modifications to our proposal. One commenter cited the International Maritime Organization's International Code for Fire Safety Systems (FSS Code) requirement for the use of two independent valves to control the release of a CO_2 system and, noting that the FSS Code also allows for the use of a lock box and key to prevent activation of the flooding system, said that ''[a]s the lock box is designed to work with an existing system controls it will be easier to install and maintain'' than a lockout valve. We also require a dual-action release arrangement on most spaces larger than 6,000 cubic feet, and passenger vessels are required to have a locked box to protect the release handles against inadvertent discharge. The locked boxes and dual action releases help to ensure that the system is only activated when intended, and that the agent is released to the desired space during an emergency. The use of a locked box reduces the probability of tampering or inadvertent release by inquisitive or malicious passengers. Lockout valves, on the other hand, serve to protect personnel during system maintenance and testing, when accidental discharges have been known to occur.

A second commenter suggested that, as an alternative to requiring lockouts, a ''better approach for life safety would be to prohibit new installations of carbon dioxide systems.'' This suggestion is beyond the scope of this rulemaking, which seeks only to provide protective measures where CO_2 fire suppression systems are used, and to provide a regulatory structure for CO_2 alternative (clean agent) systems.

Finally, a third commenter said we should substitute ''master or person-in-charge'' for ''master'' as the person responsible for ensuring the reopening of carbon dioxide system valves after maintenance, because not all vessels use masters, or use masters only when the vessel is underway. We have made the suggested change.

Odorizers. Eleven commenters addressed our odorizer proposal. Two supported our proposal, and one of these two said odorizers ''are widely used low-cost methods for reducing the risk to personnel in spaces protected with carbon dioxide.''

One commenter asked if we intended to require adding wintergreen scent directly to the carbon dioxide gas stored in system cylinders, or if we intended to require even hand-held pressurized CO_2 cylinders to be odorized. Neither is our intent. However, if it ever becomes feasible to odorize CO_2 directly in the cylinder, this could be considered for approval as a regulatory equivalent to our requirement for the CO_2 system to have an approved odorizing unit.

Seven commenters questioned the effectiveness of an odorizer requirement. Most asked why we think odorizers are superior to the sirens, strobe lights, or other alarms they already use to warn personnel in the event of a carbon dioxide discharge. In our view odorizers are not necessarily superior to those other alarms, but a

natural complement to existing protective measures. Alarms are intended to alert personnel in the protected space when a CO_2 system discharges. The alarm is short and stops once the gas has stopped flowing from the storage bottles. Because the gas is naturally odorless and colorless, the addition of an odorizer will signal to personnel where the CO_2 gas is and will provide notice as long as it remains, and will continue to provide an alert to danger after discharge. Further, the odor provides easy indication if it remains in the protected space or if the gas has migrated, perhaps unexpectedly, to other compartments. Being alerted to where the CO_2 gas is and how long it remains should enhance the safety of personnel. The longstanding use of mercaptan to signify the presence of natural gas and the successful use of wintergreen odorizers for shore-based CO_2 systems show the validity of such requirements. For example, the Nuclear Regulatory Commission's NRC Information Notice 99–05 describes an incident in which a security guard was alerted to the dangerously concentrated presence of migrated CO_2 in an area outside of a protected space by its wintergreen scent. With crew familiarization, and the explanatory signage we require, personnel will become accustomed to wintergreen being associated with CO_2 discharges, just as they learn to differentiate other alerts such as bells and sirens in their workplace.

One commenter pointed out that carbon dioxide casualties in recent years have resulted from persons being trapped in spaces during carbon dioxide discharges, and not from a lack of warning. We acknowledge that odorizers, by themselves, will not prevent a trapping incident. However, the odorizer will at least give a person additional warning that he or she should exit the space if possible and it may also alert others nearby who can help extricate any trapped person, and will alert individuals to potentially dangerous concentrations post-discharge.

Another commenter asked whether an offensive odor might work better than wintergreen, and raised practical concerns about how the crew would recognize the scent if it was masked by other environmental conditions, such as the presence of perfume or cleaning agent odors. We chose wintergreen because it is required, except when it is already in common use for non-emergency purposes in the system location, by the National Fire Protection Association's commonly-used NFPA 12 Standard on Carbon Dioxide Extinguishing Systems, and therefore is widely and inexpensively available. Personnel are likely to respond to an unusual scent without regard to how pleasant it smells, especially if they are trained to do so. If other environmental odors are strong enough to cause notice, they will prompt a simple investigation that presumably will quickly allay concerns of a CO_2 leak. Wintergreen is used on shore-based systems in part to avoid confusing a CO_2 presence with the presence of mercaptan-laced natural gas.

Three commenters suggested alternatives to our proposal. As other commenters also observed, one commenter said wintergreen may be confused with other scents in use on the vessel. Therefore this commenter suggested using an odor other than wintergreen, or adding color to the carbon dioxide gas. Our existing regulations allow for the approval of regulatory equivalents when strict compliance with regulatory requirements is impractical, and when there are alternatives that can be shown to achieve the same level of safety that the regulations provide. Owners and operators who find it impractical to use the wintergreen odor may have another odor approved under these equivalency provisions. However, we expect most systems to use wintergreen, given its acceptance for shore-based systems under NFPA 12 and its wide and inexpensive availability. The success and availability of wintergreen additives in the shore-based systems provide the basis for choosing this as the standard. We will continue to monitor industry standards for the success of alternative scents or adding color to carbon dioxide gas.

A second proponent of alternatives suggested prohibiting the installation of new carbon dioxide systems instead of requiring systems to be odorized. This comment is beyond the scope of this rulemaking, which seeks only to provide protective measures where such systems are used, and to provide a regulatory structure for CO_2 alternative (clean agent) fire suppression systems.

The third proponent of alternatives suggested using plastic wrap to detect leaks rather than requiring odorizers. This suggestion is also beyond the scope of this rulemaking. Further, it would only help those looking for a leak to detect it, assuming the wrap happened to be in place at the location of the leak, but it would not alert persons who are engaged in other activities at the time of an indavertant discharge as the odorizers are designed to do. Existing requirements for annually validating the weight of fire suppression agents provide routine protection against the small leaks that the commenter's suggestion would target, but they do not focus on the full discharge that is the focus of this rulemaking.

Cost information. Eight commenters provided information about the cost of our proposals. One commenter provided a combined estimate of $3,472 to meet both the lockout valve and odorizer proposals.

Four commenters provided cost estimates for lockout valves. Two of these supplied estimates ranging between $800 and $1,800 per lockout valve. A third estimated that a lockout valve for a less-than-2-inch pipe would cost $2,895. The fourth estimated that the total cost of lockouts for the commenter's 30 vessels would be $175,000, but did not estimate the total number of lockouts that would be required.

Three commenters provided cost estimates for odorizers. One said the cost of odorizing a system would be $400. Another estimated the cost at $3,225, and had received a discounted estimate of $25,329 for eight tanks. The third estimated the cost, for 30 vessels, as $75,000, but did not indicate how many tanks would require treatment.

We have incorporated the additional specific cost information provided by these commenters as appropriate based on the completeness of data and sources provided. This final rule reflects new national average costs accordingly. In the NPRM, we gave the national average cost for lockout valves under two inches as $1,258, and $3,188 for lockout valves two inches or more in length. The new figures are $2,076 and $4,925 respectively.

Four commenters, some of whom acknowledged that the costs of our specific proposals might be reasonable, stated that our proposals were unreasonable when considered cumulatively with the cost of other recent Federal regulations, including Coast Guard regulations, affecting vessel owners and operators. Two of these commenters operate dinner cruise vessels, and cited their inability to pass these cumulative costs to their customers without harming their ability to compete with land-based recreational attractions not subjected to marine safety regulations. We reviewed our proposed regulation in light of the cost concerns cited by commenters, and we have modified the regulatory text for the final rule to minimize costs. Existing vessels will not be affected by our lockout and odorizer requirements unless they install or alter a CO_2 system. We encourage vessel owners and operators to voluntarily modify existing CO_2 systems to include lockouts and

odorizers, but we will not require them to do so. We acknowledge the new Executive Order 13563 of January 2011 (''Improving Regulation and Regulatory Review'') that asks Federal regulatory agencies to ''tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.'' In this rule, we have sought to minimize the cumulative impacts on industry by removing the NPRM requirements for existing vessels unless the CO_2 system is altered. Consequently, in this final rule we reduced the incremental cumulative cost to industry from the NPRM's figure of $9.8 million to $2.3 million, a reduction of $7.5 million or 77 percent over 10 years (using a 7-percent discount rate).

Regulatory analysis. One commenter, an industry association, stated the breakeven analysis is contradicted by actual experience since the Coast Guard found no CO_2-related fatalities in the U.S. commercial fleet in 13 years. The commenter also said we did not account for other factors that might have been involved in the casualties linked to carbon dioxide discharges, pointing out that many casualties occurred on foreign-flagged or naval vessels that would not be subject to our rule, and said we should have included in the rulemaking docket those NFPA and EPA studies that we discuss in the analysis. We acknowledge that most of the CO_2 casualties occurred on foreign vessels or naval vessels. However, the hazard and vessel similarities suggest a risk remains on U.S. flag commercial vessels. The primary hazard in the incidents mentioned above was an unintended or accidental CO_2 release. The breakeven and uncertainty analysis in the preliminary regulatory analysis for the NPRM acknowledged many of these concerns. The breakeven analysis of the NPRM (which included all new and existing fire suppression systems on certain classes of commercial vessels) found that the rule would need to prevent 0.22 fatalities per year to break even, or about one fatality every 4–5 years. By extension, breakeven could be achieved by preventing multiple fatalities over longer periods. This analysis did not include the value of potential non-fatal injuries and secondary impacts. As this rulemaking seeks to reduce risk to the crew on vessels with CO_2 fire suppression systems, the potential value of the avoided damages at risk is quite large in comparison to the relatively minor costs of the proposed safety measures in the NPRM. In addition, we further minimized costs in this final rule by removing the NPRM requirements for all existing vessels unless the CO_2 system is altered (in which case, that smaller subset of vessels would be going through a refurbishment). We believe this balance of both reduced costs and reduced risks makes this final rule the most effective alternative. We do not believe ''no action'' is an alternative given the inherent risks with CO_2 fire suppression systems. Coast Guard accident data reveal two more recent casualties, from a single incident, that were not reflected in our original analysis for the NPRM. Those casualties (crewmembers) recovered, but their exposure to an accidental release of carbon dioxide demonstrates that a risk remains with CO_2 fire suppression systems. We have modified the breakeven analysis for the final rule to reflect the revised applicability and reduced cost. The final rule would need to prevent one fatality every 27 years for the benefits of the rule to equal or exceed the costs. Regarding the EPA and NFPA reports, we did not place them on the docket because the EPA report is accessible online at *http://www.epa.gov/ozone/snap/fire/co2/co2report.pdf* and the NPFA reports are available free online as read-only documents at *http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=12*.

Timing of implementation. One commenter criticized as ''inadequate,'' without further explanation, the NPRM's proposal for a 5-year phase-in of lockouts and odorizers for existing carbon dioxide systems. We have modified these requirements in the final rule so that they will not affect existing systems, only new CO_2 systems.

Small business impacts. One commenter stated that most domestic passenger vessels are operated by small businesses or small entities. Given absence of documented need for application of the proposed rule to this sector of the maritime industry, the Coast Guard has a statutory duty to more rigorously examine the proposal's consequences for small businesses and entities. In the NPRM and its supporting regulatory analysis on the docket, we summarized and prepared an initial regulatory flexibility analysis discussing the impacts of this proposed rule on small entities. We performed this analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). As required by section 603(b) of the Act, we provided detailed discussion in response to the following: (1) A description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, 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; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and, under section 603(c) of the Act, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. After performing and documenting this analysis, we found that we could certify under 5 U.S.C. 605(b) that this rulemaking would not have a significant economic impact on a substantial number of small entities. We solicited public comments on this finding. We reviewed our proposed regulation in light of the cost concerns cited by commenters, and we have modified the regulatory text for the final rule to minimize costs to small entities, eliminating the need for existing vessels to meet our lockout and odorizer requirements unless they install or alter a CO_2 system.

Preemption. Throughout this final rule, we have added new text explaining the preemptive effect of our regulations. See the ''Federalism'' discussion in part VII.E of this preamble for a full discussion.

Beyond scope of rulemaking. One commenter said carbon dioxide systems should be banned for new and retrofit installations because of the availability of better alternatives, and that we should ban gas-driven alarms and shutdowns in favor of alarms and shutdowns that are not gas-driven. A second commenter said the Coast Guard should routinely hold at least one public meeting in connection with any rulemaking. These suggestions are all beyond the scope of this rulemaking, which seeks only to provide protective measures where carbon dioxide systems are used, and to provide a regulatory structure for CO_2 alternative (clean agent) fire suppression systems.

VI. Incorporation by Reference

The Director of the Office of the Federal Register has approved the material in 46 CFR 34.01–15, 147.7, and

162.161–2 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Our analyses based on 14 of these statutes or executive orders are presented below.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The final rule has not been reviewed by the Office of Management and Budget. A Final Regulatory Analysis is available in the docket as indicated under **ADDRESSES**. A summary of the Final Regulatory Analysis follows:

Table 2 summarizes a comparison of the costs and benefits of the NPRM and the final rule:

TABLE 2—COMPARISON OF IMPACTS BETWEEN NPRM AND FINAL RULE

Category	NPRM	Final rule	Change/reason
Affected population	• Retrofit systems on existing vessels: 3,204 existing CO_2 systems would require lockout valves. • New systems on new vessels: 34 new CO_2 systems would require lockout valves per year. • All existing vessels require odorizers for 7,815 CO_2 systems. New vessels require odorizers for 46 CO_2 systems per year.	• No retrofits ..... • Lockout valves required for about 2 altered CO_2 systems per year for existing vessels. • New systems on new vessels: 53 CO_2 systems required lockout valves per year. • Odorizers required for about 5 modified or replaced systems per year for existing vessels. New vessels require odorizers for 128 CO_2 systems per year.	• Final rule does not include requirements for existing vessels to retrofit and install lockout values and odorizers unless the CO_2 system is altered. • Data refreshed for new construction totals.
Unit costs that have changed: Lockout valves *.	• Under 2 inches: $1,258 ..... • Over 2 inches: $3,188.	• Under 2 inches: $2,076 ..... • Over 2 inches: $4,925.	• Unit costs increased for lockout valves based on data and information provided in public comments.
Costs (based on 7% discount rate and 10 year period of analysis).	• 10-year costs: $9.8 million ..... • Annualized costs: $1.4 million.	• 10-year costs: $2.3 million ..... • Annualized costs: $233,000 (rounded)	• Cost reduced since final rule does not include requirements for existing vessels to retrofit and install lockout values and odorizers unless the CO_2 system is replaced, altered, or added. • Unit costs increased for lockout valves based on data and information provided in public comments. However, the increased cost estimate for lockout valves is greatly offset by the removal of requirements for existing vessels as previously discussed.
Benefits	The primary benefit is the reduction in risk of crew injuries and fatalities related to CO_2 exposure from fire suppression system discharges in existing vessels and new construction. Regulatory efficiency: Rulemaking formalizes and codifies Coast Guard acceptance of alternative fire suppression systems.	The primary benefit of this final rule is the reduction in risk of crew injuries and fatalities related to CO_2 exposure from fire suppression system discharges in refurbished existing vessels and new construction. Regulatory efficiency: Rulemaking formalizes and codifies Coast Guard acceptance of alternative fire suppression systems.	Final rule scope of benefits is for systems on new vessels and existing vessels as systems are altered, resulting in lowering risk reduction. While not quantified, the benefits of this final rule are reduced compared to the proposed rule since these systems are being phased in more slowly.
Breakeven analysis **	The NPRM (which included all existing vessels) would need to prevent about 0.22 fatalities per year or about 1 fatality every 4–5 years for the benefits of the NPRM to equal or begin to exceed the costs. This analysis did not include the value of potential non-fatal injuries and secondary impacts.	The final rule would need to prevent about .037 fatalities per year or about one fatality every 27 years for the benefits of the final rule to equal or begin to exceed the costs. This analysis does not include the value of potential non-fatal injuries and secondary impacts.	As a result of reduced costs, the breakeven analysis suggests that it would take very little monetized benefits for the final rule to equal or begin to exceed costs. Consequently, there is a 5–7 fold decrease in mishap frequency needed for the benefits of this rule to equal or exceed the costs.

* These are average unit costs for lockout valves. Final rule unit cost estimates for odorizers did not change since the NPRM.

** Breakeven analysis answers the question, ''How small could the value of the non-quantified benefits be before the rule would yield zero net benefits?'' OMB guidance also acknowledges that it will not always be possible to express in monetary units all of the important benefits of a rule. See OMB Circular A–4 ''Regulatory Analysis'' (2003), page 2.

The purpose of this final rule is to advance the Coast Guard's strategic goals of marine safety and maritime mobility by clarifying and codifying the requirements for fire suppression systems that use carbon dioxide alternatives, and by requiring lockout valves and odorizers to provide safety on certain vessels that use carbon dioxide fire suppression systems. This final rule applies two new requirements that have additional costs to industry, lockout valves and odorizers, to all CO_2 suppression systems installed or altered after July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual. Lockout valves must be installed in systems protecting any space with a gross volume greater than 6,000 cubic feet. According to Coast Guard Marine Investigation Security and Law Enforcement (MISLE) data, this requirement will affect an average of 53 systems on new vessels and about two systems on existing vessels each year. Odorizers must be installed in CO_2 systems for new vessels and existing vessels with altered systems. According to MISLE data, this requirement will affect an average of 128 CO_2 systems of all sizes on newly constructed vessels and about five systems of all sizes on refurbished vessels each year.

Under the NPRM, all affected commercial vessels would have been required to install lockout valves and odorizers. This would have required existing commercial vessels to retrofit these devices. A major change from the NPRM is that the final rule will only affect newly constructed commercial vessels and those commercial vessels that may have alterations of existing systems. Furthermore, NPRM commenters provided additional data on the costs of lockout valves, which has been incorporated into our estimates and results in a higher unit cost for lockout valves. As a result of the adjustments to the proposed regulation, total costs for the final rule decrease in comparison to the NPRM despite an increase in unit cost for lockout valves.

Based on industry data and public comments, we estimate the average industry prices for installing retrofit large and small lockout valves on new vessels to be $4,925 and $2,077, respectively. Systems that handle more than 2,450 pounds of CO_2 require a valve larger than 2 inches. Of the two systems for refurbished vessels affected annually by this proposed rule, .7, on average, would require the larger, more expensive lockout valves, while 1.4, on average, systems require the smaller valves for a total undiscounted cost of about $6,184. Of the 52.5 systems for newly constructed vessels affected annually by this rule, 17.3 would require the larger, more expensive lockout valves, while 35.2 systems require the smaller valves for a total undiscounted cost of about $158,368. The annual undiscounted cost for owners of newly constructed and refurbished vessels with systems to meet the lockout valve requirement of this rule would be approximately $164,552 for each year. Industry would incur this cost for each year over the ten-year period of analysis.

As for odorizers, we estimate that the installed costs, including three warning signs, are $516/unit based on industry information. We estimate the total annual undiscounted cost of the refurbished vessels to be $2,582. For systems on newly constructed vessels, the total undiscounted annual cost is $66,105. We estimate the total annual undiscounted cost to be about $68,687 for all 133 CO_2 protected areas on these vessels. The total cost per vessel would be dependent on the number of areas protected by CO_2.

The total annual undiscounted cost for both lockout valves and odorizers for new or refurbished vessels is about $233,000 (rounded). We estimate the total present value 10-year cost of the final rule to be $1.638 million at a seven percent discount rate. This represents about an 83-percent cost reduction from the NPRM total present value 10-year cost estimate of $9.8 million. We estimate the annualized cost of the final rule to be $233,000 compared to $1.4 million for the NPRM (estimates using a seven percent discount rate).

This final rule also issues new regulations for installing, maintaining, and using approved CO_2 alternative (clean agent) fire suppression systems. We believe this promotes safety and is advantageous to industry since these alternative systems provide additional flexibility to industry and formalizes the Coast Guard's policy of approving these alternative systems. Commenters supported the NPRM provisions for alternative systems (see ''Discussion of Comments and Changes'').

As discussed in the NPRM, this rule clarifies Coast Guard approval of alternatives to using CO_2 systems. We estimate that these provisions will not have an additional cost impact because the Coast Guard has been approving alternative systems on an ad hoc basis. We expect these approved installed alternative systems will be compliant with the requirements for alternative systems proposed in this rule. We did not receive comments to the NPRM on additional costs for these regulations for alternative systems. In addition, the use of halocarbon (one of a number of alternatives) fire suppression systems has been making steady inroads in recent years (2006–2010). As discussed in the NPRM, our updated records indicate that industry installed an average of 32 halocarbon fire suppression systems compared to an average of 65 CO_2 fire suppression systems with capacity over 6,000 cubic feet annually.

Benefits

The primary benefit associated with this rule is the reduction in risk of injuries and fatalities related to CO_2 exposure. CO_2 exposure has long been recognized as a potential hazard to human health. The National Institute of Occupational Safety and Health, in its publication NIOSH 76–194, ''Criteria for a Recommended Standard—Occupational Exposure to Carbon Dioxide,'' available at *http://www.cdc.gov/niosh/76-194.html,* has set criteria for a standard for limits of exposure to CO_2 in workplace settings.

Other Federal and industry agencies and associations have also recently concluded that CO_2 fire suppression systems could pose a risk. For example, the National Fire Prevention Association guidance in its 2005 edition for CO_2 fire suppression systems located on land states that ''total flooding CO_2 suppression systems shall not be used in normally occupied enclosures.'' In addition, the EPA, in its 2000 report, ''Carbon Dioxide as a Fire Suppressant: Examining the Risk,'' has suggested that clarifying maritime regulation would be beneficial to reducing accidental exposure.

We searched the MISLE database for casualty reports between 1996 and 2010 to find personnel casualties related to CO_2 fire suppression systems discharged in areas with personnel. We found one non-fatal incident in the U.S. commercial fleet during the 15-year period analyzed for this rulemaking. As previously stated, CO_2 flooding can

cause fatalities to people who are in CO_2-protected spaces when the odorless CO_2 gas is discharged accidentally, or without adequate warning to evacuate. Exposure to an accidental release of carbon dioxide demonstrates that a risk remains in the regulated fleet covered by this rule. The danger of CO_2 flooding can be reduced by the use of lockout valves that are locked ''off'' when someone is conducting maintenance in the CO_2 system as well as the use of odorizers to help the person at risk detect CO_2 discharges.

In addition, there have been incidents in military and foreign fleets. Due to these aggregate incidents, we conclude that some (unquantifiable) risk remains present. Given this situation, wherein we are not able to quantify the remaining risk and risk reduction for the purposes of this rulemaking, we used a ''breakeven analysis'' to understand the benefits of this rule.

In breakeven analysis, we compare the known costs to an estimate of a loss to determine a threshold. In safety regulations, it is common to use the ''value of a statistical life'' (VSL) concept to measure a loss. The VSL is not meant to be an estimate of the actual value of a life, but a measure of society's willingness to pay to reduce small risks of fatalities. Using the annualized costs at a seven percent discount rate over a ten-year period, or $233,320 for the final rule, we can compare it to the VSL's $6.3 million.[1] The final rule would need to prevent 1 fatality in 27 years, or 0.037 fatalities per year to break even. The NPRM (which included all new and existing fire suppression systems on certain classes of commercial vessels) would have needed to prevent about 0.22 fatalities per year or about 1 fatality every 4–5 years for the benefits of the NPRM to equal or begin to exceed the costs. The breakeven analysis of the NPRM and final rule did not include the value of potential non-fatal injuries and secondary impacts.

Finally, a secondary benefit of this rule is the expediting of applications for approval of alternative systems. These systems, using non-CO_2 agents, have been approved on a case-by-case basis for years. The final rule will make these requirements clearer. These qualitative changes of reducing transaction costs are not easily translated into quantitative cost impacts, so none were estimated. In addition, the increased clarity with regards to the requirements for alternative systems may foster the increased development and use of these potentially safer systems.

Regulatory Alternatives

We considered three alternatives for this rulemaking:

Alternative One—No action. We rejected this alternative as unacceptable since risk would remain under the existing regulations. Also, because the current regulations do not specifically address the use of alternative ''clean agent'' fire suppression systems, there would be continued uncertainty in selecting and using these systems as well as obtaining Coast Guard approval for them. This alternative was rejected for both the NPRM and the final rule.

Alternative Two—Ban the use of CO_2 fire suppression systems. While a risk exists, a complete prohibition of CO_2 systems could require a complete retrofit of existing commercial vessels affected and be prohibitively expensive. This alternative was rejected for both the NPRM and the final rule.

Alternative Three—Amend Coast Guard regulations to clarify that approved alternatives to CO_2 systems are permissible, to set general parameters for those alternative systems and for getting them approved, and to require the use of lockout valves and odorizers in all spaces protected by CO_2 systems on new and refurbished vessels. In our view, this alternative is the best approach to reducing risk and minimizing cost to the marine industry as we are aware that CO_2 generally remains the least expensive agent available for these systems. Consequently, this alternative was used as the basis for the NPRM for new construction and all existing fire suppression systems on certain classes of commercial vessels in a retrofit mode. After reviewing public comment and considering the amended cost basis, we have amended the rules proposed in our NPRM and will apply this regulation only to new or refurbished vessels. This final rule Alternative Three is a modification of the NPRM Alternative Three.

B. 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. A final regulatory flexibility analysis discussing the impact of this final rule on small entities is available in the docket and contained in the final regulatory analysis where indicated under **ADDRESSES**.

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 entities affected by this proposed rule are generally found under the North American Industry Classification System (NAICS) codes for water transportation. The most common NAICS codes include the following 6-digit NAICS codes for marine transportation: 483212–Coastal and Great Lakes Freight Transportation, 487210–Scenic and Sightseeing Water Transportation, and 532411–Commercial Air, Rail, and Water Transportation Equipment Leasing. A complete listing of the relevant NAICS codes may be found in the NPRM's regulatory analysis. We examined employment levels and revenue of the entities that will be affected by this final rule and based on the available data; we estimate that about 56 percent of entities affected by the final rule requirements are small under the Regulatory Flexibility Act and the SBA size standards.

The final rule's regulatory analysis used a higher unit cost adjusted as a result of comments received on the NPRM. This higher unit cost increased the cost impacts on revenue for affected entities. This did not change our overall finding from the NPRM that this rule did not have a significant economic impact on a substantial number of small entities. As previously explained, we have significantly reduced the scope of this regulation compared to the proposed rule. We estimated the proposed rule would have directly regulated approximately 400 small entities, while we estimate this final rule will directly regulate only 31 small entities.

As a result of our analysis of 2010 MISLE data on new construction vessels and refurbishment vessels, we concluded that small entities likely comprise 56 percent (or approximately 31 unique businesses) of the total population evaluated. Of these 31 businesses, we found revenue data on 15 entities. The balance of 16 unknown size entities was assumed to be small by SBA standards. Under our methodology, we assume an entity is small unless we can find evidence that indicates it is not. We determined that 80 percent of

[1] ''Valuing Mortality Risk Reductions in Homeland Security Regulatory Analyses'', DHS/CBP, June 2008.

small entities would have an annual revenue impact of less than 1 percent. Further, we estimated that the impact on 93 percent of these small entities would be less than 3 percent of annual revenue. Table 3 provides details of these conclusions.

TABLE 3—COMPARISON OF NPRM AND FINAL RULE REVENUE IMPACTS

Category	NPRM result	FR result	Change
Small Business Affected	400	31	Applicability of Vessel Groups.
0% ≤ Impact ≤ 1%	84%	80%	Unit Cost Increased.
1% < Impact ≤ 3%	16%	13%	
3% > Impact ≤ 5%		7%	
Total	100%	100%	

Source: USCG Calculations.

The final rule reduced the impact on the number of small entities affected since the vessels affected are a much smaller group of new construction and refurbished vessels and excludes the retrofit vessels originally included in the NPRM. By reducing the scope of this final rule in response to public comment, we have reduced the revenue impact not only on the whole industry, but on the small entities as well.

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

C. Assistance for Small Entities

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

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).

D. Collection of Information

This final rule would not require a new collection of information or a revision to an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Coast Guard did not receive any COI-related comments to the NPRM.

The Coast Guard has been approving alternatives to CO_2 systems under an approved collection, OMB Control Number 1625–0035. Satisfactory lockout valve and odorizing unit installation will be confirmed under current Coast Guard inspections.

E. 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 evaluated this rule under E.O. 13132 and have determined that they are preemptive of State law or regulation in that Congress intended the Coast Guard to regulate the type and design of fire suppression systems aboard certain vessels. The regulations listed in this rulemaking are promulgated pursuant to 46 U.S.C. 3306, 3703, 4102, 4306, and 4502.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels) are within the fields foreclosed from regulation by the States (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). For those regulations promulgated under 46 U.S.C. 3306 and 3703, Congress directed the Secretary to prescribe regulations that would require equipment used in firefighting and fire prevention aboard certain inspected vessels. Here, the Coast Guard is promulgating regulations to require enhanced or alternative safety features on firefighting systems on board inspected vessels defined in 46 U.S.C. Chapters 33 and 37, which will improve safety. Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Under 46 U.S.C. 4102, Congress mandated certain uninspected vessels, defined within 46 U.S.C. Chapter 41, to be equipped with fire extinguishers that meet the requirements prescribed by regulation. The Coast Guard, in considering the safety features necessary to extinguish fires promptly and effectively and, to the extent required in consultation with the Towing Safety Advisory Committee, has promulgated regulations requiring certain equipment features for uninspected vessels. These regulations do not raise any preemption concerns under Executive Order 13132 since States may not promulgate rules within this category of uninspected vessels.

Congress mandated the Coast Guard to promulgate regulations requiring safety standards for fire extinguishers aboard uninspected commercial fishing vessels defined in 46 U.S.C. Chapter 45. Those regulations promulgated under 46 U.S.C. 4502 require certain features to make fire extinguishers readily identifiable and accessible in accordance with Congress's mandate. Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Regulations issued pursuant to 46 U.S.C. 4302 are preemptive of State law to the extent outlined in 46 U.S.C. 4306. Under 46 U.S.C. 4306, Federal regulations establishing minimum safety standards for recreational vessels and associated equipment and the procedures and tests established to measure conformance with those standards preempt State law, unless the State law is identical to a Federal regulation, or a State is specifically provided an exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State.

Additionally, President Obama's Memorandum of May 20, 2009 titled ''Preemption'' states that ''preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' To that end, when a department or agency intends to preempt State law, it should do so only if justified under legal principles governing preemption, including those outlined in Executive Order 13132, and it should also include preemption provisions in the codified regulation. In accordance with this memorandum, the Coast Guard has included in the final rule regulatory text the statutory provisions granting it preemption authority as well as language indicating its intent to preempt conflicting state or local regulation, when required.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 uses the following voluntary consensus standards: Underwriters Laboratories (UL) standards UL 2127 ''Standard for Inert Gas Clean Agent Extinguishing System Units,'' and UL 2166 ''Standard for Halocarbon Clean Agent Extinguishing System Units,'' and National Fire Protection Association (NFPA) standard 2001 ''Standard on Clean Agent Fire Extinguishing Systems.'' The sections that reference these standards and the locations where these standards are available are listed in the regulatory text for 46 CFR 34.01–15, 147.7, and 162.161–2.

This rule also uses technical standards other than voluntary consensus standards. The test described in the regulatory text in 46 CFR 162.161–6 is in accordance with requirements of the International Maritime Organization, IMO MSC/Circ.848 ''Revised Guidelines for the Approval of Equivalent Fixed Gas Fire-Extinguishing Systems, as referred to in SOLAS 74, for machinery spaces and cargo pump-rooms'' and IMO MSC.1/Circ. 1267 ''Amendments to the Revised Guidelines for the Approval of Equivalent Fixed Gas Fire-Extinguishing Systems, as referred to in SOLAS 74, for machinery spaces and cargo pump-rooms (MSC/Circ. 848).'' The remaining requirements and tests were developed by the Coast Guard and used to evaluate currently approved carbon dioxide alternative (clean agent) fire suppression systems. These requirements are described throughout the regulations. They are used because we did not find voluntary consensus standards that are applicable to this rule.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34) (d) of the Instruction and 6 (a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002).'' This rule involves regulations concerning vessel operation safety standards and regulations concerning equipping of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 34

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 62

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 97

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

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 112

Vessels.

46 CFR Part 115

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 118

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 119

Marine safety, Passenger vessels.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 131

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 132

Cargo vessels, Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 147

Hazardous materials transportation, Incorporation by reference, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 182

Marine safety, Passenger vessels.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 194

Explosives, Hazardous materials transportation, Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons listed in the preamble, the Coast Guard amends 46 CFR parts 25, 27, 28, 31, 34, 35, 62, 71, 76, 78, 91, 95, 97, 107, 108, 112, 115, 118, 119, 122, 131, 132, 147, 162, 167, 169, 176, 181, 182, 185, 189, 190, 193, 194, and 196 as follows:

PART 25—REQUIREMENTS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 25.30–1 to read as follows:

§ 25.30–1 Applicability; preemptive effect.

This subpart applies to all vessels contracted for on or after November 19, 1952, except that § 25.30–90 of this subpart applies to vessels contracted for before that date, and the regulations in this subpart have preemptive effect over State or local regulations in the same field.

■ 3. Revise § 25.30–15 to read as follows:

§ 25.30–15 Fixed fire-extinguishing systems.

When a fixed fire-extinguishing system is installed, it must be a type approved or accepted by the Commandant (CG–5214) or the Commanding Officer, U.S. Coast Guard Marine Safety Center.

PART 27—TOWING VESSELS

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

Authority: 46 U.S.C. 3306, 4102, (as amended by Pub. L. 104–324, 110 Stat. 3901); Department of Homeland Security Delegation No. 0170.1.

■ 5. In § 27.100, revise the section heading and add paragraph (e) to read as follows:

§ 27.100 Applicability; preemptive effect.

* * * * *

(e) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 6. In § 27.101, revise paragraphs (1) and (3) and add paragraph (4) to the definition of ''Fixed fire-extinguishing system'' to read as follows:

§ 27.101 Definitions.

* * * * *

Fixed fire-extinguishing system means:

(1) A carbon dioxide system that satisfies 46 CFR 76.15 and the system labeling requirements in 46 CFR 78.47–9 and 78.47–11 and that is approved by the Commandant;

* * * * *

(3) A manually-operated water-mist system that satisfies NFPA 750 (incorporated by reference; see § 27.102) and that is approved by the Commandant; or

(4) A clean agent system that satisfies 46 CFR 95.16 and the labeling requirements of 46 CFR 97.37–9 and 97.37–11 and that is approved by the Commandant.

* * * * *

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 7. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

■ 8. In § 28.30, revise the section heading and add paragraph (c) to read as follows:

§ 28.30 Applicability; preemptive effect.

* * * * *

(c) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 9. Revise § 28.825(b)(2)(iv) to read as follows:

§ 28.825 Excess fire detection and protection equipment.

* * * * *

(b) * * *

(2) * * *

(iv) The control cabinets or spaces containing valves or manifolds for the various fire extinguishing systems must be distinctly marked in conspicuous red letters at least 2 inches high: ''[CARBON DIOXIDE/FOAM/CLEAN AGENT—as appropriate] FIRE SYSTEM.''

* * * * *

PART 31—INSPECTION AND CERTIFICATION

■ 10. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

■ 11. In § 31.01–1, revise the section heading and add paragraph (d) to read as follows:

§ 31.01–1 Inspections required—TB/ALL, preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 12. In § 31.10–18, revise Table 31.10–18(c) and paragraph (f) to read as follows:

§ 31.10–18 Firefighting equipment: General—TB/ALL.

* * * * *

(c) * * *

TABLE 31.10–18(c)

Type system	Test
Foam	Systems utilizing a soda solution must have that solution replaced. In all cases, ascertain that powder is not caked.
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.
Halon 1301 and halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. NOTE: Halon 1301 system approvals have expired, but existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed, as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

(f) The marine inspector must check all fire extinguishing system piping, controls, valves, and alarms to ascertain that the system is in good operating condition. For carbon dioxide or clean agent systems as described in 46 CFR subpart 95.16, the marine inspector must:

(1) Verify that flow is continuous and that the piping and nozzles are unobstructed; and

(2) Verify that any discharge delays and pre-discharge alarms function properly during the flow test.

* * * * *

PART 34—FIREFIGHTING EQUIPMENT

■ 13. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 14. In § 34.01–1, revise the section heading and add paragraph (b) to read as follows:

§ 34.01–1 Applicability—TB/ALL, preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 15. Revise § 34.01–15 to read as follows:

§ 34.01–15 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard 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 National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, telephone 202–372–1405, and is available from the sources listed in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, telephone 610–832–9585, *http://www.astm.org.*

(1) ASTM F 1121–87 (Reapproved 1993), Standard Specification for International Shore Connections for Marine Fire Applications, 1987, IBR approved for § 34.10–15 (''ASTM F 1121'').

(2) [Reserved]

(c) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471, telephone 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 13–1996, Standard for the Installation of Sprinkler Systems, IBR approved for § 34.30–1 (''NFPA 13–1996'').

(2) NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, (2008 Edition), IBR approved for § 34.05–5(a)(4) (''NFPA 2001'').

■ 16. In § 34.05–5, revise the section heading and paragraphs (a)(3) through (7) to read as follows:

§ 34.05–5 Fire extinguishing systems—T/ALL.

(a) * * *

(3) *Lamp and paint lockers and similar spaces.* A carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 or a water spray system must be installed in all lamp and paint lockers, oil rooms, and similar spaces.

(4) *Pump rooms.* A carbon dioxide or clean agent system as described in 46 CFR subpart 95.16, a foam spray system, or a water spray system must be installed for the protection of all pump rooms. If a clean agent system is installed for the pump room of a tank ship carrying chemical cargos, the amount of extinguishing agent must be determined by using the agent design concentration determined by the cup burner method, described in NFPA 2001 (incorporated by reference; see § 34.01–15) for the cargo requiring the greatest amount of agent.

(5) *Boiler rooms.* On tankships contracted for on or after November 19, 1952, a carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 or a foam system must be installed to protect any space containing a main or auxiliary oil fired boiler, the boiler fuel oil service pump, or any fuel oil units such as heaters, strainers, valves, manifolds, etc., that are subject to the discharge pressure of the fuel oil service pumps.

(6) *Machinery spaces.* A carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 must be installed to protect any machinery space containing an internal combustion-propelling engine that uses fuel having a flashpoint of less than 110 degrees Fahrenheit.

(7) *Internal combustion installations.* A fire extinguishing system must be provided for an internal combustion installation and:

(i) The system must be a carbon dioxide or clean agent system as described in 46 CFR subpart 95.16;

(ii) On vessels of 1,000 gross tons and over on an international voyage, the construction or conversion of which is contracted for on or after May 26, 1965, a carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 must be installed in any space containing internal combustion or gas turbine main propulsion machinery, auxiliaries with an aggregate power of 1,000 b.h.p. or greater, or their fuel oil units, including purifiers, valves, and manifolds; and

(iii) On vessels of 1,000 gross tons and over, the construction, conversion or automation of which is contracted for on or after January 1, 1968, a carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 must be installed in any space containing internal combustion or gas turbine main propulsion machinery, auxiliaries with an aggregate power of 1,000 b.h.p. or greater, or their fuel oil units, including purifiers, valves and manifolds.

* * * * *

■ 17. Add § 34.15–50 to read as follows:

§ 34.15–50 Lockout valves—T/ALL.

(a) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(b) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(c) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(d) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(e) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(f) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

■ 18. Add § 34.15–60 to read as follows:

§ 34.15–60 Odorizing units—T/ALL.

Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

PART 35—OPERATIONS

■ 19. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 20. Revise the subpart 35.01 heading to read as follows:

Subpart 35.01—General Provisions; Special Operating Requirements

■ 21. Add § 35.01–2 to read as follows:

§ 35.01–2 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 22. Revise § 35.40–7 to read as follows:

§ 35.40–7 Carbon dioxide and clean agent alarms—T/ALL.

Each carbon dioxide or clean agent fire extinguishing alarm installed after November 19, 1952, must be conspicuously marked: ''WHEN ALARM SOUNDS VACATE AT ONCE. [CARBON DIOXIDE/CLEAN AGENT—as appropriate] BEING RELEASED.''

■ 23. Add § 35.40–8 to read as follows:

§ 35.40–8 Carbon dioxide warning signs—T/ALL.

Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(a) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(b) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(c) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 24. Revise § 35.40–10 to read as follows:

§ 35.40–10 Steam, foam, carbon dioxide, or clean agent fire smothering apparatus—TB/ALL.

Each steam, foam, carbon dioxide, or clean agent fire fighting apparatus must be marked ''[CARBON DIOXIDE/STEAM/FOAM/CLEAN AGENT—as appropriate] FIRE APPARATUS'' in red letters at least 2 inches high. Branch pipe valves leading to the several compartments must be distinctly marked to indicate the compartments or parts of the vessel to which they lead.

PART 62—VITAL SYSTEM AUTOMATION

■ 25. The authority citation for part 62 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 26. In § 62.01–1, revise the section heading and add a second sentence to read as follows:

§ 62.01–1 Purpose, preemptive effect.

* * * The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 27. In § 62.25–20, revise paragraph (d)(1)(ii) to read as follows:

§ 62.25–20 Instrumentation, alarms, and centralized stations.

* * * * *

(d) * * *

(1) * * *

(ii) Fire, general alarm, carbon dioxide/Halon 1301/clean agent fire extinguishing system, vital machinery, flooding, engineers' assistance-needed, and non-vital alarms.

* * * * *

PART 71—INSPECTION AND CERTIFICATION

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 29. Revise the subpart 71.01 subpart heading to read as follows:

Subpart 71.01—General Provisions; Certificate of Inspection

§ 71.01–1 [Redesignated as § 71.01–2]

■ 30. Redesignate existing § 71.01–1 as § 71.01–2, and add new § 71.01–1 to read as follows:

§ 71.01–1 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 31. In § 71.20–20, revise paragraph (b) to read as follows:

§ 71.20–20 Specific tests and inspections.

* * * * *

(b) Installation of carbon dioxide or clean agent extinguishing piping in accordance with 46 CFR 76.15–15 and 46 CFR subpart 95.16.

* * * * *

■ 32. In § 71.25–20, revise the section heading and Table 71.25–20(a)(2) to read as follows:

§ 71.25–20 Fire detecting and extinguishing equipment.

(a) * * *

(2) * * *

TABLE 71.25–20(a)(2)

Type system	Test
Foam	Systems utilizing a soda solution must have that solution replaced. In all cases, ascertain that powder is not caked.
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.

TABLE 71.25–20(a)(2)—Continued

Type system	Test
Halon 1301 and halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. NOTE: Halon 1301 system approvals have expired, but existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed, as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

■ 33. In § 71.65–5, revise paragraph (d)(6) to read as follows:

§ 71.65–5 Plans and specifications required for new construction.

* * * * *

(d) * * *

(6) Extinguishing systems, including fire main, carbon dioxide, clean agent, foam, and sprinkling systems.

* * * * *

PART 76—FIRE PROTECTION EQUIPMENT

■ 34. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 35. In § 76.01–1, revise the section heading and add paragraph (b) to read as follows:

§ 76.01–1 General; preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 36. Revise § 76.05–1 to read as follows:

§ 76.05–1 Fire detecting systems.

(a) On the following vessels, approved fire detecting systems must be installed in the locations indicated by Table 76.05–1(a):

(1) Any vessel on an international voyage;

(2) Any vessel, not on an international voyage, of more than 150 feet in length having sleeping accommodations for passengers; and

(3) Any vessel, not on an international voyage, of 150 feet or less in length that has sleeping accommodations for 50 or more passengers; such vessels are not required to have a detecting system in the cargo spaces.

TABLE 76.05–1(a)

Space	Detecting systems	Fixed extinguishing systems
Safety areas:		
Wheelhouse or fire-control room	None required [1]	None required.[1]
Stairway and elevator enclosures	None required [1]	None required.[1]
Communication corridors	None required [1]	None required.[1]
Lifeboat embarkation and lowering stations	None required [1]	None required.[1]
Radio room	None required [1]	None required.[1]
Accommodations:		
Staterooms, toilet spaces, isolated pantries, etc	None required [1]	None required.[1]
Offices, lockers, and isolated storerooms	Electric, pneumatic, or automatic sprinkling [1].	None required. [1]
Public spaces	None required with 20-minute patrol. Electric, pneumatic, or automatic sprinkling with 1 hour patrol [1].	None required.[1]
Open decks or enclosed promenades	None required	None required.
Service spaces:		
Galleys	None required [1]	None required.[1]
Main pantries	None required [1]	None required.[1]
Motion picture booths and film lockers	Electric, pneumatic, or automatic sprinkling [1 2].	None required.[1]
Paint and lamp rooms	Smoke detecting [2]	Carbon dioxide [3] or clean agent system as described in 46 CFR subpart 95.16.
Inaccessible baggage, mail, and specie rooms and storerooms.	Smoke detecting [2]	Carbon dioxide.[3]
Accessible baggage, mail, and specie rooms and storerooms.	Electric, pneumatic, or automatic sprinkling.	None required.[1]
Refrigerated storerooms	None required	None required.
Carpenter, valet, photographic, and printing shops, sales rooms, etc.	Electric, pneumatic, or automatic sprinkling.	None required.[1]
Machinery spaces:		

TABLE 76.05–1(a)—Continued

Space	Detecting systems	Fixed extinguishing systems
Coal fired boilers: Bunker and boiler space	None required	None required.[1]
Oil fired boilers: Spaces containing oil fired boilers either main or auxiliary, their fuel oil service pumps, and/or such other fuel oil units as the heaters, strainers, valves, manifolds, etc., that are subject to the discharge pressure of the fuel oil service pumps, together with adjacent spaces to which oil can drain.	None required	Carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 or foam.[4]
Internal combustion or gas turbine propelling machinery spaces.	None required	Carbon dioxide or clean agent system as described in 46 CFR subpart 95.16.[5]
Electric propulsive motors or generators of open type	None required	None required.
Enclosed ventilating systems for motors and generators of electric propelling machinery.	None required	Carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 (in ventilating system).[6]
Auxiliary spaces, internal combustion, or gas turbine	None required	Carbon dioxide or clean agent system as described in 46 CFR subpart 95.16.[7]
Auxiliary spaces, electric motors, or generators	None required	None required.
Auxiliary spaces, steam	None required	None required.
Trunks to machinery spaces	None required	None required.
Fuel tanks	None required	None required.[8]
Cargo spaces:		
Inaccessible during voyage (combustible cargo), including trunks (excluding tanks).	Smoke detecting	Carbon dioxide.[3]
Accessible during voyage (combustible cargo)	Smoke detecting, electric, pneumatic or automatic sprinkling.	Automatic or manual sprinkling.
Vehicular deck (except where no overhead deck is 30 feet in length or less).	None required	Manual sprinkling.
Cargo oil tanks	None required	Carbon dioxide or foam.[3]
Specially suitable for vehicles	Smoke detecting, electric, pneumatic or automatic sprinkling.	Carbon dioxide, automatic or manual sprinkling.

Notes to Table 76.01–5(a)

[1] Vessels of 100 gross tons and over contracted for, on, or before May 27, 1936, and having combustible joiner work must be fitted with an automatic sprinkling system, except in relatively incombustible spaces.

[2] On vessels contracted for prior to November 19, 1952, electric or pneumatic detecting may be substituted.

[3] On vessels contracted for prior to January 1, 1962, a steam smothering system may be accepted. However, although existing steam smothering systems may be repaired, replaced, or extended, no new system contracted for on or after January 1, 1962, will be permitted.

[4] Protection of auxiliary boilers, fuel oil units, valves, and manifolds are not required on vessels contracted for prior to November 19, 1952.

[5] Not required on vessels less than 300 gross tons (except on an international voyage) using fuel with a flashpoint higher than 110° F., where the space is normally manned.

[6] Not required on vessels contracted for prior to November 19, 1952.

[7] Not required on vessels less than 300 gross tons nor on vessels contracted for prior to November 19, 1952, except when fuel, including starting fuel, has a flashpoint of 110 °F. or less.

[8] When fuel with a flashpoint of 110 °F. or lower is used, the space containing the fuel tanks must be protected by a carbon dioxide or clean agent system as described in 46 CFR subpart 95.16.

(b) The arrangements and details of the fire detecting systems must meet the requirements in 46 CFR subparts 76.25 through 76.33.

■ 37. In § 76.10–5, revise paragraph (h) to read as follows:

§ 76.10–5 Fire pumps.

* * * * *

(h) If a vessel uses main or auxiliary oil fired boilers or internal combustion propulsion machinery, and is required to have two fire pumps, the pumps must be in separate spaces and the arrangement of pumps, sea connections, and sources of power must be arranged to ensure that a fire in any one space will not put all of the fire pumps out of operation. However, in vessels of less than 300 feet in length, when it is shown to the satisfaction of the Commandant that it is unreasonable or impracticable to meet this requirement due to the size or arrangement of the vessel, or for other reasons, the installation of a total flooding carbon dioxide or clean agent extinguishing system may be accepted as an alternate method of extinguishing any fire that affects the powering and operation of at least one of the required fire pumps.

■ 38. Add § 76.15–50 to read as follows:

§ 76.15–50 Lockout valves.

(a) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(b) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(c) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(d) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(e) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(f) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

■ 39. Add § 76.15–60 to read as follows:

§ 76.15–60 Odorizing units.

Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

PART 78—OPERATIONS

■ 40. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 41. In § 78.01–1, revise the section heading and add paragraph (b) to read as follows:

§ 78.01–1 General; preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 42. Revise § 78.47–9 to read as follows:

§ 78.47–9 Carbon dioxide and clean agent alarms.

Each carbon dioxide or clean agent fire extinguishing alarm must be conspicuously marked: ''WHEN ALARM SOUNDS VACATE AT ONCE. CARBON DIOXIDE OR CLEAN AGENT BEING RELEASED.''.

■ 43. Add § 78.47–11 to read as follows:

§ 78.47–11 Carbon dioxide warning signs.

Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(a) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(b) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(c) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 44. Revise § 78.47–17 to read as follows:

§ 78.47–17 Fire extinguishing system controls.

Each control cabinet or space containing valves or manifolds for a fire extinguishing system must be distinctly marked in conspicuous red letters at least 2 inches high: ''[CARBON DIOXIDE/STEAM/FOAM/WATER SPRAY/MANUAL SPRINKLING/AUTOMATIC SPRINKLING/CLEAN AGENT—as appropriate] FIRE SYSTEM.''.

PART 91—INSPECTION AND CERTIFICATION

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 46. In, revise the subpart 91.01 subpart heading to read as follows:

Subpart 91.01—General Provisions; Certificate of Inspection

§ 91.01–1 [Redesignated as § 91.01–2]

■ 47. Redesignate existing § 91.01–1 as § 91.01–2, and add new § 91.01–1 to read as follows:

§ 91.01–1 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 48. In § 91.20–20, revise paragraph (b) to read as follows:

§ 91.20–20 Specific tests and inspections.

* * * * *

(b) For installation of carbon dioxide fire extinguishing system piping, see 46 CFR 95.15–15. For clean agent fire extinguishing piping, see 46 CFR 95.16–15.

* * * * *

■ 49. In § 91.25–20, revise the section heading and Table 91.25–20(a)(2) to read as follows:

§ 91.25–20 Fire extinguishing equipment.

(a) * * *

(2) * * *

TABLE 91.25–20(a)(2)

Type system	Test
Foam	Systems utilizing a soda solution must have that solution replaced. In all cases, ascertain that powder is not caked
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65
Halon 1301 and halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67.
NOTE: Halon 1301 system approvals have expired, but existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.	

TABLE 91.25–20(a)(2)—Continued

Type system	Test
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed, as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

■ 50. In § 91.55–5, revise paragraph (d)(4) to read as follows:

§ 91.55–5 Plans and specifications required for new construction.

* * * * *

(d) * * *

(4) Details of extinguishing systems, including fire mains, carbon dioxide, clean agent, foam, and sprinkling systems.

* * * * *

PART 95—FIRE PROTECTION EQUIPMENT

■ 51. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 52. In § 95.01–1, revise the section heading and add paragraph (b) to read as follows:

§ 95.01–1 General; preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 53. In § 95.05–10, revise paragraphs (e)(3)(ii) and (f) to read as follows:

§ 95.05–10 Fixed fire extinguishing systems.

* * * * *

(e) * * *

(3) * * *

(ii) On vessels of 1,000 gross tons and greater, a fixed carbon dioxide or clean agent system as described in 46 CFR subpart 95.16 must be installed in any space that contains internal combustion or gas turbine main propulsion machinery, or auxiliary machinery with an aggregate power of 1,000 b.h.p. or greater, or the fuel oil units of such machinery, including purifiers, valves, and manifolds.

(f) On vessels contracted for on or after November 19, 1952, where an enclosed ventilating system is installed for electric propulsion motors or generators, a fixed carbon dioxide extinguishing system must be installed in such a system.

■ 54. In § 95.10–5, in paragraph (h), revise the second sentence to read as follows:

§ 95.10–5 Fire pumps.

* * * * *

(h) * * * However, when it is shown to the satisfaction of the Commandant that it is unreasonable or impracticable to meet this requirement due to the size or arrangement of the vessel, or for other reasons, the installation of a total flooding carbon dioxide or clean agent system may be accepted as an alternate method of extinguishing any fire that could affect the powering and operation of at least one of the required fire pumps.

■ 55. In § 95.15–5, revise paragraphs (e)(1) and (2) to read as follows:

§ 95.15–5 Quantity, pipe sizes, and discharge rates.

* * * * *

(e) * * *

(1) The number of pounds of carbon dioxide required must be equal to the gross volume of the largest space which is capable of being sealed divided by 22. In no case, however, may the quantity be less than that required by paragraph (c)(2) of this section.

(2) The discharge of two thirds of the required quantity of carbon dioxide must be completed within 10 minutes. Any faster discharge rate is also acceptable.

* * * * *

■ 56. Revise § 95.15–30 to read as follows:

§ 95.15–30 Alarms.

(a) A protected space must be fitted with an approved audible alarm if:

(1) The space is normally accessible to persons onboard while the vessel is being navigated; and

(2) Is not a paint locker or similar small space.

(b) The alarm must:

(1) Sound automatically and audibly for at least 20 seconds before carbon dioxide is discharged into the space;

(2) Be conspicuously and centrally located and be marked as required by 46 CFR 97.37–9; and

(3) Use stored gas power provided by the extinguishing agent, gas from pilot cylinders, or gas from cylinders specifically provided to power the alarms.

(c) For systems installed on or after July 1, 1957, alarms are mandatory only for systems required to be fitted with a delayed discharge.

■ 57. Add § 95.15–50 to read as follows:

§ 95.15–50 Lockout valves.

(a) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(b) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(c) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(d) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(e) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(f) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

■ 58. Add § 95.15–60 to read as follows:

§ 95.15–60 Odorizing units.

Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

■ 59. Add subpart 95.16 to read as follows:

Subpart 95.16—Fixed Clean Agent Gas Extinguishing Systems, Details

Sec.

95.16–1 Application.
95.16–5 Controls.
95.16–10 Piping, fittings, valves, nozzles.
95.16–15 Extinguishing agent: Quantity.
95.16–20 Extinguishing agent: Cylinder storage.
95.16–25 Manifold and cylinder arrangements.
95.16–30 Enclosure openings.
95.16–35 Pressure relief.
95.16–40 Locked spaces.
95.16–45 Pre-discharge alarms and time delay devices.
95.16–50 Instructions.
95.16–60 System piping installation testing.
95.16–90 Installations contracted for prior to July 9, 2012.

Subpart 95.16—Fixed Clean Agent Gas Extinguishing Systems, Details

§ 95.16–1 Application.

(a) ''Clean agent'' means a halocarbon or inert gas used as a fire extinguishing agent.

(b) A clean agent extinguishing system must comply with this part. Systems contracted for prior to July 9, 2012, may, as an alternative, comply with 46 CFR 95.16–90.

(c) Each clean agent system must:

(1) Be of a total flooding type to protect against Class B and Class C hazards as defined in 46 CFR 95.50–5;

(2) Address and minimize any hazard to personnel created by the effects of extinguishing agent decomposition products and combustion products, especially the effects of decomposition product hydrogen fluoride (HF), if applicable;

(3) Be accompanied by an approved manufacturer's design, installation, operation, and maintenance manual;

(4) Be used only to protect enclosed spaces;

(5) Not employ electric power for system actuation or controls; and

(6) Not use any source of power for alarms in protected spaces, other than the extinguishing agent, gas from pilot cylinders, or gas from cylinders specifically provided to power the alarms.

§ 95.16–5 Controls.

(a) At least one releasing station must be installed near the main entrance/exit to the protected space.

(b) System controls must be of an approved type and be suitably protected from damage and located outside the protected space.

(c) Systems must have releasing stations consisting of one control to operate the stop valve to the protected space and a second control to release at least the required amount of agent. These two controls must be located in a box or other enclosure clearly identified for the particular space.

(d) Systems protecting a single space not exceeding 6,000 cubic feet in gross volume may be installed without a stop valve if a suitable horizontal means of escape from the space exists.

(e) Controls may not be located in any space that could be cut off from the operator in the event of fire in the protected space.

(f) Where the extinguishing agent can be released by remote control, the system must have a manual local control at the cylinders.

(g) Systems with remotely operated releasing controls must have mechanical override features.

(h) Automatic discharge arrangements may be used for spaces having a gross volume less than 6,000 cubic feet. However, automatic discharge is required for spaces having a gross volume less than 6,000 cubic feet where the agent is stored in the protected space, as allowed by 46 CFR 95.16–20.

(i) A system designed to use gas pressure from one or more agent storage cylinders and provide pilot pressure to actuate the release of extinguishing agent from other storage cylinders that contain three or more total storage cylinders must be equipped with at least two designated pilot cylinders, each of which is capable of manual control at the pilot cylinder.

§ 95.16–10 Piping, fittings, valves, nozzles.

(a) Piping, fittings, and valves must be:

(1) In accordance with the manufacturer's approved design, installation, operation, and maintenance manual;

(2) Securely supported and when necessary protected against damage;

(3) Protected inside and out against corrosion; and

(4) Equipped with:

(i) Dead end lines (dirt traps) that extend at least 2 inches beyond the last nozzle of each distribution line and that are closed with a cap or plug; and

(ii) Drains and dirt traps, fitted where necessary to prevent dirt or moisture accumulation and located in accessible locations where possible.

(b) *Piping requirements.* Piping must be:

(1) Used exclusively for extinguishing system purposes;

(2) Protected by a pressure relief valve in sections where gas pressure can be trapped between closed valves; and

(3) Welded if it passes through living quarters.

(c) *Piping prohibitions.* Piping must not:

(1) Use rolled groove or cut groove ends; or

(2) Be fitted with drains or other openings if it passes through living quarters.

(d) *Valve requirements.* Valves for system operation must be:

(1) Outside the protected space, and

(2) Marked, if serving a branch line, to indicate the space the branch line serves.

(e) *Valve prohibitions.* Valves may not be located in any space that could be cut off from the operator in the event of fire in the protected space.

§ 95.16–15 Extinguishing agent: Quantity.

A separate supply need not be provided for each space protected, but the total available supply must be at least sufficient for the space requiring the greatest amount.

§ 95.16–20 Extinguishing agent: Cylinder storage.

(a) Unless installed as required in paragraph (b) of this section, the agent must be stored outside of the protected space. Common bulkheads and decks located between the cylinder storage room and the protected spaces must meet the insulation criteria for Class A–60, as defined in 46 CFR 72.05–10.

(b) The cylinders may be stored inside the protected space, if:

(1) The space does not exceed 6,000 cubic feet gross volume; and

(2) The system can be automatically operated by a pneumatic heat actuator as well as a remote manual control.

(c) The cylinder storage space must be properly ventilated and designed to preclude an anticipated ambient temperature in excess of 130° Fahrenheit.

(d) The cylinders must be securely fastened and supported as directed in the manufacturer's approved design, installation, operation, and maintenance manual, and where necessary protected against damage.

(e) The cylinders must be mounted so they are readily accessible and capable

of easy removal for recharging and inspection and for weighing in the case of halocarbon system cylinders.

(f) The cylinders must be installed to provide a space of at least 2 inches between the deck and the bottom of the cylinders. A tray or other bottom support located 2 inches above the deck is an acceptable arrangement.

(g) The cylinders must be mounted upright, unless otherwise specified in the instruction manual.

(h) All cylinder storage room doors must open outward.

§ 95.16–25 Manifold and cylinder arrangements.

(a) A check valve must be provided between each cylinder and manifold or distribution piping. The valve must be permanently marked to indicate the direction of flow.

(b) If the same cylinder is used to protect more than one space, normally, closed stop valves must be provided to direct the agent into each protected space.

(c) Each cylinder must be fabricated, tested, and marked in accordance with 46 CFR 147.60(b) and 49 CFR part 180.

(d) The cylinders in a common manifold must be:

(1) Of the same size;

(2) Filled with the same amount of agent; and

(3) Pressurized to the same working pressure.

§ 95.16–30 Enclosure openings.

(a) If mechanical ventilation is provided for in a protected space, the ventilation system must automatically shut down prior to discharge of the system to that space.

(b) If natural ventilation is provided for in a space protected by a clean agent extinguishing system, the ventilation must be capable of being easily and effectively closed off.

(c) All other openings to a protected space must be capable of being closed. Doors, shutters, or dampers must be installed for openings in the lower portion of the space. Openings in the upper portion of the space must be capable of being closed off either by permanently installed means or by the use of canvas or other material normally carried on the vessel.

§ 95.16–35 Pressure relief.

Tight compartments, like refrigeration spaces and paint lockers, must have a way to relieve the accumulation of excessive pressure within the compartment when the extinguishing agent is injected.

§ 95.16–40 Locked spaces.

If a space or enclosure containing extinguishing agent supply or controls is lockable, a key to the space or enclosure must be in a break glass type box conspicuously located adjacent to the opening.

§ 95.16–45 Pre-discharge alarms and time delay devices.

(a) Each system protecting a space with greater than 6,000 cubic feet gross volume or a space less than 6,000 cubic feet gross volume without a suitable horizontal escape route must have a pneumatic pre-discharge alarm and time delay.

(1) The time delay period must:

(i) Last at least 20 seconds;

(ii) Be approved by the Officer in Charge, Marine Inspection during system installation; and

(iii) Provide enough time for one person to walk from the farthest area of the protected space to the primary exit.

(2) The time delay device must be pneumatically operated and have an accuracy of -0/+20 percent of the rated time delay period throughout the operating temperature range and range of delay settings.

(b) The pre-discharge alarm must:

(1) Sound for the duration of the time delay;

(2) Be conspicuously and centrally located in the protected space and marked as required by 46 CFR 97.37–9;

(3) Depend on the extinguishing agent, gas from a pilot cylinder, or a nitrogen cylinder specifically provided to power the alarm for its source of power; and

(4) Be audible over running machinery.

§ 95.16–50 Instructions.

(a) Simple, complete operating instructions must be conspicuously located at or near any release station and in the extinguishing agent cylinder storage room.

(b) On a system in which extinguishing agent cylinders are stored outside the protected space, operating instructions must also:

(1) Include a schematic diagram of the system; and

(2) Describe alternate methods of discharging the extinguishing agent into protected spaces should the manual releases or stop valve controls fail to operate.

§ 95.16–60 System piping installation testing.

(a) *Halocarbon systems.* A pressure test using the extinguishing agent, air or inert gas, must be conducted on halocarbon system discharge piping on completion of piping installation and before extinguishing agent cylinders are connected.

(1) Except as otherwise specified in this section:

(i) Piping from the cylinders to the stop valves or selector valves must be subjected to a pressure of 1½ times the cylinder charging pressure at 70° Fahrenheit; and

(ii) The leakage during a 2-minute period must not exceed a pressure drop of 10 percent of the test pressure.

(2) Individual branch lines to a protected space must be tested as described in paragraph (a)(1) of this section, except that:

(i) The pressure must be 150 pounds per square inch; and

(ii) Distribution piping must be capped within the protected space at the first joint upstream of the nozzles.

(3) Pneumatic actuation piping must be tested as described in paragraph (a)(1) of this section.

(b) *Inert gas systems.* A pressure test using air or inert gas must be conducted on each inert gas system's piping on completion of piping installation and before extinguishing agent cylinders are connected.

(1) Except as otherwise specified in this section:

(i) Piping from the cylinders to the stop valves or selector valves must be subjected to a pressure of 1,000 pounds per square inch (psi) at 70° Fahrenheit; and

(ii) The leakage during a 2-minute period must not exceed a pressure drop of 100 psi.

(2) Individual branch lines to a protected space must be tested as described in paragraph (b)(1) of this section, except that:

(i) The pressure must be 600 psi; and

(ii) Distribution piping must be capped within the protected space at the first joint upstream of the nozzles.

(3) Pneumatic actuation piping must be tested as described in paragraph (b)(1) of this section.

(c) *Small independent systems.* In lieu of test requirements in paragraphs (a) or (b) of this section, a small independent halocarbon or inert gas system, like those found in emergency generator rooms and paint lockers, may be tested by blowing out the piping with air pressure of at least 100 psi, if:

(1) There are no valves in the system discharge piping; and

(2) There is not more than one change in direction between the agent container and the discharge nozzle.

§ 95.16–90 Installations contracted for prior to July 9, 2012.

Installations contracted for prior to July 9, 2012, must meet the

requirements of this subpart unless previously approved existing arrangements, materials, and facilities are:

(a) Maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection; and

(b) Subjected to no more than minor repairs or alterations implemented to the same standards as the original installation.

PART 97—OPERATIONS

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 61. In § 97.01–1, revise the section heading and add paragraph (b) to read as follows:

§ 97.01–1 General; preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 62. Revise § 97.37–9 to read as follows:

§ 97.37–9 Carbon dioxide and clean agent alarms.

Each carbon dioxide or clean agent fire extinguishing alarm must be conspicuously marked: ''WHEN ALARM SOUNDS VACATE AT ONCE. CARBON DIOXIDE OR CLEAN AGENT BEING RELEASED.''.

■ 63. Add § 97.37–11 to read as follows:

§ 97.37–11 Carbon dioxide warning signs.

Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(a) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(b) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(c) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 64. Revise § 97.37–13 to read as follows:

§ 97.37–13 Fire extinguishing system controls.

The control cabinets or spaces containing valves or manifolds for the various fire extinguishing systems must be distinctly marked in conspicuous red letters at least 2 inches high: ''[STEAM/CARBON DIOXIDE/CLEAN AGENT/FOAM/WATER SPRAY—as appropriate] FIRE APPARATUS.''.

PART 107—INSPECTION AND CERTIFICATION

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

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3307; 46 U.S.C. 3316; Department of Homeland Security Delegation No. 0170.1; § 107.05 also issued under the authority of 44 U.S.C. 3507.

■ 66. In § 107.01, revise the section heading, redesignate the existing text as paragraph (a), and add paragraph (b) to read as follows:

§ 107.01 Purpose; preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 67. In § 107.231, add paragraph (w) to read as follows:

§ 107.231 Inspection for certification.

* * * * *

(w) Piping for each halocarbon and inert gas extinguishing system must be tested in accordance with 46 CFR 95.16–60.

* * * * *

■ 68. In § 107.235, revise the section heading and paragraph (b) and remove the note at the end of the section.

The revisions read as follows:

§ 107.235 Servicing of hand portable fire extinguishers, semi-portable fire extinguishers and fixed fire extinguishing systems.

* * * * *

(b) Each fixed fire extinguishing system must be examined for excessive corrosion and general condition and checked and serviced as indicated, depending on the extinguishing agent used by the system.

(1) *Carbon dioxide:* Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.

(2) *Halon 1301 or Halocarbon:* Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or, if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible Halon 1301 and halocarbon connections must be tested or renewed as required by 46 CFR 147.60 and 147.65 or 147.67. Note that Halon 1301 system approvals have expired, but that existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.

(3) *Inert gas:* Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections must be tested or renewed as required by 46 CFR 147.60 and 147.66.

(4) *Foam, except premix systems:* Discharge foam for approximately 15 seconds from a nozzle designated by the marine inspector. Discharge water from all other lines and nozzles. Submit a sample of the foam liquid to the manufacturer or its authorized representative for determination of specific gravity, pH, percentage of water dilution, and solid content and for certification as a suitable firefighting foam.

(5) *Premix aqueous film forming foam:* Remove the pressure cartridge

and replace the cartridge if the seal is punctured, sampling the premix solution in accordance with the manufacturer's instructions, and replacing any cylinders that are discharged.

PART 108—DESIGN AND EQUIPMENT

■ 69. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; Department of Homeland Security Delegation No. 0170.1.

■ 70. Add § 108.102 to read as follows:

§ 108.102 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 71. Add § 108.444 to read as follows:

§ 108.444 Lockout valves.

(a) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(b) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(c) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(d) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(e) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(f) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

■ 72. Add § 108.446 to read as follows:

§ 108.446 Odorizing units.

Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

■ 73. Add § 108.626 to read as follows:

§ 108.626 Carbon dioxide warning signs.

Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(a) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(b) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(c) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 74. In § 108.627, revise the section heading to read as follows:

§ 108.627 Carbon dioxide and clean agent alarms.

* * * * *

■ 75. In § 108.631, revise paragraph (a) to read as follows:

§ 108.631 Fixed fire extinguishing system controls.

(a) Each cabinet or space that contains a valve, control, or manifold of a fixed fire extinguishing system must be marked in conspicuous red letters at least 2 inches high: ''[CARBON DIOXIDE/CLEAN AGENT/FOAM/WATER SPRAY—as appropriate] FIRE APPARATUS.''.

* * * * *

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

■ 76. The authority citation for part 112 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 77. In § 112.05–1, revise the section heading and add paragraph (d) to read as follows:

§ 112.05–1 Purpose; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 78. In § 112.15–5, revise paragraph (v) to read as follows:

§ 112.15–5 Final emergency loads.

* * * * *

(v) Each smoke extraction fan, not including smoke detector sampling, and carbon dioxide or clean agent exhaust fans for spaces.

PART 115—INSPECTION AND CERTIFICATION

■ 79. The authority citation for part 115 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 80. In, revise the subpart A heading to read as follows:

Subpart A—General Provisions; Certificate of Inspection

§§ 115.2 through 115.99 [Reserved]

■ 81. In subpart A, add reserved §§ 115.2 through 115.99 and add § 115.1 to read as follows:

§ 115.1 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 82. In § 115.810, revise Table 115.810(b) to read as follows:

§ 115.810 Fire protection.

* * * * *

(b) * * *

TABLE 115.810(b)—SEMIPORTABLE AND FIXED FIRE EXTINGUISHING SYSTEMS

Type system	Test
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.
Halon 1301 and halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. Note that Halon 1301 system approvals have expired, but that existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Dry chemical (cartridge operated)	Examine pressure cartridge and replace if end is punctured, has leaked, or is otherwise unsuitable. Inspect hose and nozzle to see if they are clear. Insert charged cartridge. Ensure dry chemical is free flowing, not caked, and extinguisher contains full charge.
Dry chemical (stored pressure)	See that pressure gauge is in the operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge cylinder if pressure is low or if dry chemical is needed.
Foam (stored pressure)	See that the pressure gauge is in the operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge cylinder if pressure is low or if foam is needed. Replace premixed agent every 3 years.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with maintenance instructions in system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

PART 118—FIRE PROTECTION EQUIPMENT

■ 83. The authority citation for part 118 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 84. In § 118.115, revise the section heading and add paragraph (d) to read as follows:

§ 118.115 Applicability; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 85. In § 118.410, add paragraphs (f)(7) through (12) and (h) to read as follows:

§ 118.410 Fixed gas fire extinguishing systems.

* * * * *

(f) * * *

(7) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after [July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(8) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(9) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(10) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(11) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(12) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

* * * * *

(h) Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

* * * * *

PART 119—MACHINERY INSTALLATION

■ 86. The authority citation for part 119 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 87. In § 119.100, revise the section heading and add a third sentence to read as follows:

§ 119.100 Intent; preemptive effect.

* * * The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 88. In § 119.710, revise paragraph (a)(3) to read as follows:

§ 119.710 Piping for vital systems.

(a) * * *

(3) Carbon dioxide, Halon 1301, and clean agent systems;

* * * * *

PART 122—OPERATIONS

■ 89. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 90. In § 122.115, revise the section heading and add paragraph (d) to read as follows:

§ 122.115 Applicability; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 91. In § 122.612, add paragraph (i) to read as follows:

§ 122.612 Fire protection equipment.

* * * * *

(i) Carbon dioxide warning signs. Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(1) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(2) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(3) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

PART 131—OPERATIONS

■ 92. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 93. Revise the subpart A heading to read as follows:

Subpart A—General Provisions; Notice of Casualty and Records of Voyage

§§ 131.101 through 131.109 [Reserved]

■ 94. In subpart A, add reserved §§ 131.101 through 131.109 and add § 131.100 to read as follows:

§ 131.100 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 95. Revise § 131.815 to read as follows:

§ 131.815 Carbon dioxide and clean agent alarms.

Each carbon dioxide or clean agent fire extinguishing alarm must be conspicuously marked: ''WHEN ALARM SOUNDS VACATE AT ONCE. CARBON DIOXIDE OR CLEAN AGENT BEING RELEASED.''

■ 96. Add § 131.817 to read as follows:

§ 131.817 Carbon dioxide warning signs.

Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(a) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(b) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(c) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 97. Revise § 131.825 to read as follows:

§ 131.825 Fixed fire extinguishing system controls.

Each control cabinet or space containing a valve or manifold for a fire extinguishing system must be distinctly marked in conspicuous red letters at least 2 inches high: ''[CARBON DIOXIDE/HALON/CLEAN AGENT] FIRE APPARATUS'', as appropriate.

PART 132—FIRE-PROTECTION EQUIPMENT

■ 98. The authority citation for part 132 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307; Department of Homeland Security Delegation No. 0170.1.

■ 99. Revise the subpart A heading to read as follows:

Subpart A—General Provisions; Fire Main

■ 100. In § 132.100, revise the section heading and add paragraph (d) to read as follows:

§ 132.100 General; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

§ 132.350 [Amended]

■ 101. In § 132.350, revise Table 132.350 to read as follows:

* * * * *

TABLE 132.350—TESTS OF SEMIPORTABLE AND FIXED FIRE-EXTINGUISHING SYSTEMS

Type of system	Test
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.

TABLE 132.350—TESTS OF SEMIPORTABLE AND FIXED FIRE-EXTINGUISHING SYSTEMS—Continued

Type of system	Test
Halon 1301 and halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. Note that Halon 1301 system approvals have expired, but that existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Dry chemical (cartridge-operated)	Examine pressure cartridge and replace if end is punctured or if cartridge has leaked or is otherwise unsuitable. Inspect hose and nozzle to see that they are clear. Insert charged cartridge. Ensure that dry chemical is free-flowing (not caked) and that extinguisher contains full charge.
Dry chemical (stored pressure)	See that pressure gauge is in operating range. If not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low or if dry chemical is needed.
Foam (stored pressure)	See that any pressure gauge is in the operating range. If it is not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

PART 147—HAZARDOUS SHIPS' STORES

■ 102. The authority citation for part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 103. In § 147.1, revise the section heading and add paragraph (d) to read as follows:

§ 147.1 Purpose; applicability; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 104. Revise § 147.7 to read as follows:

§ 147.7 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard 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 Coast Guard, Office of Operating and Environmental Standards (CG–522), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, 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/code_of_federal_regulations/ibr_locations.html.*

(b) American Boat and Yacht Council, Inc. (ABYC), 613 Third Street, Suite 10, Annapolis, MD 21403, telephone 410–990–4460, *www.abyinc.org.*

(1) ABYC H–25–81, Portable Fuel Systems and Portable Containers for Flammable Liquids, (May 12, 1981), (''ABYC H–25–81''), IBR approved for § 147.45.

(2) [Reserved].

(c) American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), Publication Sales Department, 1791 Tullie Circle NE., Atlanta, GA 30329, telephone 404–636–8400, *www.ashrae.org.*

(1) ANSI/ASHRAE 34–78, Number Designation of Refrigerants (approved 1978), (''ANSI/ASHRAE 34–78''), IBR approved for § 147.90.

(2) [Reserved].

(d) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA, 02169–7471, telephone 617–770–3000, *www.nfpa.org.*

(1) NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2008 Edition, (''NFPA 2001''), IBR approved for §§ 147.66 and 147.67.

(2) [Reserved].

(e) Public Health Service, Department of Health and Human Services (DHHS), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(1) DHHS Publication No. (PHS) 84–2024, The Ship's Medicine Chest and Medical Aid at Sea (revised 1984), (''DHHS Publication No. (PHS) 84–2024''), IBR approved for § 147.105.

(2) [Reserved].

(f) Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062, telephone 847–272–8800, *www.ul.com.*

(1) UL 30, Standard for Metal Safety Cans, 7th Ed. (revised March 3, 1987), (''UL 30''), IBR approved for § 147.45.

(2) UL 1185, Standard for Portable Marine Fuel Tanks, Second Edition, revised July 6, 1984, (''UL 1185''), IBR approved for § 147.45.

(3) UL 1313, Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed. (revised March 22, 1985), (''UL 1313''), IBR approved for § 147.45.

(4) UL 1314, Standard for Special-Propose Containers, 1st Ed. (revised February 7, 1984), (''UL 1314''), IBR approved for § 147.45.

■ 105. In § 147.45, revise paragraphs (f)(4) through (6) to read as follows:

§ 147.45 Flammable and combustible liquids.

* * * * *

(f) * * *

(4) A portable outboard fuel tank meeting the specifications of ABYC H–25–81 (incorporated by reference, see

§ 147.7) or one identified by Underwriters Laboratories as meeting the specifications of UL 1185 (incorporated by reference, see § 147.7);

(5) A portable safety container identified by Underwriters Laboratories as meeting the specifications of UL 30 or UL 1313 (both incorporated by reference, see § 147.7); or

(6) A portable safety container identified by Underwriters Laboratories as meeting the requirements of UL 1314 (incorporated by reference, see § 147.7).

* * * * *

■ 106. In § 147.60, revise paragraph (a)(4) to read as follows:

§ 147.60 Compressed gases.

* * * * *

(a) * * *

(4) Except as provided in 46 CFR 147.65, 147.66, and 147.67, maintained and retested in accordance with 49 CFR 180.

* * * * *

■ 107. Add § 147.66 to read as follows:

§ 147.66 Inert gas fire extinguishing systems.

(a) Inert gas cylinders forming part of a clean agent fixed fire extinguishing system must be retested every five years, except that cylinders with a water capacity of 125 pounds or less may be retested every 10 years in accordance with 49 CFR 180.209(b).

(b) An inert gas cylinder must be removed from service if it:

(1) Leaks;

(2) Is dented, bulging, severely corroded, or otherwise weakened;

(3) Has lost more than 5 percent of its tare weight; or

(4) Has been involved in a fire.

(c) Flexible connections between cylinders and discharge piping for fixed inert gas fire extinguishing systems must be renewed or retested in accordance with section 7.3 of NFPA 2001 (incorporated by reference, see § 147.7).

■ 108. Add § 147.67 to read as follows:

§ 147.67 Halocarbon fire extinguishing systems.

(a) Each halocarbon cylinder forming part of a clean agent fixed fire extinguishing system must be:

(1) Retested at least once every 12 years and before recharging if it has been discharged and more than five years have elapsed since the last test; or

(2) As an alternative, a cylinder conforming to the requirements of 49 CFR 180.209(g) may be given the complete external visual inspection in lieu of hydrostatic testing provided for by that section.

(b) A halocarbon cylinder must be removed from service if it:

(1) Leaks;

(2) Is dented, bulging, severely corroded, or otherwise weakened;

(3) Has lost more than 5 percent of its tare weight; or

(4) Has been involved in a fire.

(c) Flexible connections between cylinders and discharge piping for halocarbon fire extinguishing systems must be renewed or retested in accordance with section 7.3 of NFPA 2001 (incorporated by reference, see § 147.7).

PART 162—ENGINEERING EQUIPMENT

■ 109. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

■ 110. Revise the subpart 162.017 heading to read as follows:

Subpart 162.017—General Provisions; Valves, Pressure-Vacuum Relief, for Tank Vessels

■ 111. Revise § 162.017–1 to read as follows:

§ 162.017–1 Preemptive effect; incorporation by reference.

(a) The regulations in this part have preemptive effect over State or local regulations in the same field.

(b) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard 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 U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, 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/code_of_federal_regulations/ibr_locations.html.*

(c) International Organization for Standardization (ISO), Case postal 56, CH–1211 Geneva 20, Switzerland, telephone +41 22 749 01 11, *www.iso.org.*

(1) ISO 15364, Ships and Marine Technology—Pressure/Vacuum Valves for Cargo Tanks, First Edition (Sep. 1, 2000), (''ISO 15364''), IBR approved for § 162.017–3.

(2) [Reserved]

■ 112. Add subpart 162.161 to read as follows:

Subpart 162.161—Fixed Clean Agent Fire Extinguishing Systems

Sec.

162.161–1 Scope.
162.161–2 Incorporation by reference.
162.161–3 Materials.
162.161–4 Construction.
162.161–5 Instruction manual for design, installation, operation, and maintenance.
162.161–6 Tests for approval.
162.161–7 Inspections at production.
162.161–8 Marking.
162.161–9 Procedure for approval.

Subpart 162.161—Fixed Clean Agent Fire Extinguishing Systems

§ 162.161–1 Scope.

(a) This subpart applies to each engineered fixed fire extinguishing system using a halocarbon or an inert gas as an agent. It does not apply to pre-engineered systems.

(b) Each system must be designed for protection against fires in both Class B flammable liquids and Class C energized electrical equipment, as those hazard classes are defined in NFPA 2001 (incorporated by reference, see § 162.161–2).

(c) Each system must meet the requirements of this subpart, be listed or approved by an independent laboratory approved by the Coast Guard and listed at *http://cgmix.uscg.mil/,* bear the mark of the laboratory, and be approved by the Coast Guard under 46 CFR 159.005–13.

§ 162.161–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. Coast Guard, Office of Operating and Environmental Standards (CG–522), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources indicated in this section, 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/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, telephone +44 (0)20 7735 7611, *www.imo.org.*

(1) MSC/Circ. 848, Revised Guidelines for The Approval of Equivalent Fixed Gas Fire-Extinguishing Systems, as Referred to in SOLAS 74, for Machinery Spaces and Cargo Pump-Rooms (June 8, 1998), (''MSC/Circ. 848''), IBR approved for § 162.161–6.

(2) MSC.1/Circ. 1267, Amendments to Revised Guidelines for the Approval of Equivalent Fixed Gas Fire-Extinguishing Systems, as Referred to in SOLAS 74, for Machinery Spaces and Cargo Pump-Rooms (MSC/Circ. 848) (June 4, 2008), (''MSC.1/Circ. 1267''), IBR approved for § 162.161–6.

(c) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169–7471, telephone 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2008 Edition, (''NFPA 2001''), IBR approved for §§ 162.161–1 and 162.161–3.

(2) [Reserved].

(d) Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062, telephone 847–272–8800, *www.ul.com.*

(1) UL 2127, Standard for Safety forInert Gas Clean Agent Extinguishing System Units (Revised March 22, 2001), (''UL 2127''), IBR approved for §§ 162.161–5, 162.161–6 and 162.161–7.

(2) UL 2166, Standard for Safety for Halocarbon Clean Agent Extinguishing System Units (Revised March 22, 2001), (''UL 2166''), IBR approved for §§ 162.161–5, 162.161–6 and 162.161–7.

§ 162.161–3 Materials.

(a) All system components must meet the requirements of NFPA 2001 (incorporated by reference, see § 162.161–2) and be made of metal, except for bushings, o-rings, and gaskets. Aluminum or aluminum alloys may not be used.

(b) Metal components must:

(1) Have a solidus melting point of at least 1700 °F;

(2) Be corrosion resistant; and

(3) Be galvanically compatible with each adjoining metal component, or if galvanically incompatible, be separated by a bushing, o-ring, gasket, or similar device.

(c) Each extinguishing agent must be:

(1) Listed as an acceptable total flooding agent for occupied areas on the Environmental Protection Agency's Significant New Alternative Products (SNAP) list, 40 CFR part 82, subpart G, Appendix A; and

(2) Identified as an extinguishing agent in NFPA 2001 (incorporated by reference, see § 162.161–2).

(d) The extinguishing concentration of extinguishing agent required for each system must be determined by the cup burner method, described in NFPA 2001 (incorporated by reference, see § 162.161–2), for the specific fuel requiring the highest extinguishing concentration.

(e) The design concentration of the agent required for each protected space must be calculated using a safety factor of 1.3 times the extinguishing concentration. The quantity must be calculated at the minimum expected ambient temperature using the design concentration based on either:

(1) Gross volume, including the casing, bilge, and free air contained in air receivers; or

(2) Net volume, calculated as shown in NFPA 2001 (incorporated by reference, see § 162.161–2), including the casing, bilge, and free air contained in air receivers, if one of the following is satisfactorily performed:

(i) Full discharge test; or

(ii) Enclosure integrity procedure in accordance with Annex C of NFPA 2001; for discharge or enclosure integrity tests, the minimum concentration hold time must be 15 minutes, and the extinguishing agent concentration at the end of the hold time must be at least 85 percent of the design concentration.

(f) If fuel can drain from the compartment being protected to an adjacent compartment or if the compartments are not entirely separate, the quantity must be sufficient for both compartments.

§ 162.161–4 Construction.

(a) Each pressure vessel must comply with 46 CFR 147.60(a) and (b).

(b) Each system must be capable of operation without an external power source.

(c) Manual actuation for the system must be by mechanical or pneumatic means.

(d) Automatically actuated systems must be released by pneumatic or fusible element detection systems.

(e) Each system installed with the extinguishing agent cylinders stored inside a protected space of 6,000 cubic feet or less must use automatic actuation as the primary means of actuation and have a remote backup manual mechanical actuator.

(f) Each container charged with nitrogen must have a pressure gauge.

§ 162.161–5 Instruction manual for design, installation, operation, and maintenance.

(a) The manufacturer must prepare a system instruction manual for design, installation, operation, and maintenance of the system. The manual must be reviewed and accepted by an independent laboratory listed in 46 CFR 162.161–10 and approved by the Coast Guard under 46 CFR 159.005–13.

(b) The manual must include:

(1) The design information as required in the Design Manual as detailed in UL 2166 (incorporated by reference, see § 162.161–2) for halocarbon systems and UL 2127 (incorporated by reference, see § 162.161–2) for inert gas systems;

(2) Installation, operation, and maintenance instructions as required in the Installation, Operation, and Maintenance Instruction Manual detailed in UL 2166 for halocarbon systems and UL 2127 for inert gas systems;

(3) Identification of the computer program listed or approved by the independent laboratory for designing the system;

(4) A sample diagram and calculation for a marine system for a large inspected vessel with several spaces to be protected by the same system;

(5) The approval number issued by the Coast Guard for the system under 46 CFR 159.005–13;

(6) A parts list with manufacturer's part numbers and a description of each system component;

(7) An index of chapters; and

(8) Issue and revision dates for each page.

(c) The manufacturer of each system must provide at least one copy of the system manual with each system.

§ 162.161–6 Tests for approval.

Prior to approval by an independent laboratory each system must:

(a) Satisfy the test method of MSC/Circ. 848 as amended by MSC.1/Circ. 1267 (both incorporated by reference, see § 162.161–2), except that:

(1) The Fire Type A (Tell tale) test must be conducted when the charged system cylinders have been conditioned for 24 hours at 32 °F or at the expected service temperature, if lower than 32 °F.

(2) [Reserved].

(b) Satisfy the following test requirements as indicated in UL 2166 (incorporated by reference, see § 162.161–2) for halocarbon systems or UL 2127 for inert gas systems (incorporated by reference, see § 162.161–2):

(1) Nozzle distribution;

(2) Flow calculation method verification to determine that the manufacturer's calculation method

accurately predicts the discharge time, nozzle pressure, and distribution of the extinguishing agent;

(3) Salt spray corrosion resistance for marine-type systems;

(4) Vibration resistance of installed components for marine-type systems; and

(5) Any additional tests contained in UL 2166 for halocarbon systems or UL 2127 for inert gas systems, as required for listing by the independent laboratory.

(c) Equivalent length of installed components must be identified and included in the test report in accordance with UL 2166 (incorporated by reference, see § 162.161–2) for halocarbon systems or UL 2127 (incorporated by reference, see § 162.161–2) for inert gas systems.

§ 162.161–7 Inspections at production.

(a) The system must be inspected in accordance with this section and 46 CFR 159.007–1 through 159.007–13, and tested using any additional tests that the Commandant (CG–5214) may deem necessary to maintain control of quality and to ensure compliance with this subpart.

(b) The manufacturer must:

(1) Institute procedures to maintain control over the materials used, over the manufacturing of the systems, and over the finished systems;

(2) Admit the independent laboratory inspector and any representative of the Coast Guard to any place where work is being done on systems and any place where parts or complete systems are stored;

(3) Allow the independent laboratory inspector and any representative of the Coast Guard to take samples of systems for tests prescribed by this subpart; and

(4) Conduct a leakage test on each system cylinder-valve assembly in accordance with subsections 57.1 through 57.4.2 of UL 2166 (incorporated by reference, see § 162.161–2) for halocarbon systems or subsection 55.4 of UL 2127 (incorporated by reference, see § 162.161–2) for inert gas systems.

§ 162.161–8 Marking.

The following information must be displayed on a permanent metal or pressure-sensitive nameplate attached to each agent storage cylinder/valve assembly:

(a) Manufacturer's name, address, and telephone number;

(b) Coast Guard approval number assigned to the system under 46 CFR 159.005–13;

(c) Identifying mark of the laboratory;

(d) Reference to the laboratory's listing standard;

(e) Type of extinguishing agent;

(f) Operating pressure at 70 °Fahrenheit;

(g) Storage temperature range;

(h) Factory test pressure of the cylinder;

(i) Reference to the manufacturer's marine design, installation, operation, and maintenance manual;

(j) Weight of agent charge and gross weight of cylinder/valve assembly;

(k) Minimum maintenance instructions; and

(l) Any other information required by the laboratory or another government agency.

§ 162.161–9 Procedure for approval.

(a) Preapproval review is required as detailed in 46 CFR 159.005–5 and 159.005–7.

(b) Applications for approval must be submitted in accordance with 46 CFR 159.005–9 through 159.005–12 to the Commandant (CG–5214). In addition to the listed requirements:

(1) Evidence must be shown that an acceptable follow-up factory inspection program is in place in each factory location. This could be demonstrated by providing an original copy of the contract for a follow-up program between the manufacturer and the independent laboratory. The follow-up program must include provisions that prohibit changes to the approved equipment without review and approval by the independent laboratory.

(2) Two design, installation, operation and maintenance manuals must be submitted.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

■ 113. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 114. In § 167.01–5, revise the section heading and add paragraph (d) to read as follows:

§ 167.01–5 Applicability; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 115. In § 167.45–1, revise the section heading and paragraphs (a)(3), (7), (8), and (9) to read as follows:

§ 167.45–1 Steam, carbon dioxide, Halon 1301, and clean agent fire extinguishing systems.

(a) * * *

(3) Cabinets, boxes, or casings enclosing manifolds or valves must be marked in conspicuous red letters at least 2 inches high: ''[STEAM/CARBON DIOXIDE/HALON/CLEAN AGENT—as appropriate] FIRE APPARATUS.''.

* * * * *

(7) At annual inspections, each carbon dioxide cylinder, whether fixed or portable, each Halon 1301 cylinder, and each clean agent cylinder must be examined externally and replaced if excessive corrosion is found; and:

(i) Each carbon dioxide cylinder must be weighed and recharged if its weight loss exceeds 10 percent of the charge;

(ii) Each Halon 1301 and halocarbon cylinder must be weighed and checked, and recharged or replaced if weight loss exceeds 5 percent of required weight of charge or if cylinder pressure loss exceeds 10 percent of specified gauge pressure, adjusted for temperature; and

(iii) Each inert gas cylinder must be checked and recharged or replaced if cylinder pressure loss exceeds 5 percent of specified gauge pressure adjusted for temperature.

(8) Carbon dioxide, Halon 1301, and clean agent cylinders carried on board nautical school ships must be tested and marked in accordance with the requirements of 46 CFR 147.60, 147.65, 147.66, and 147.67.

(9) On all systems test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed.

* * * * *

■ 116. In § 167.45–45, revise the section heading and add paragraphs (d) and (e) to read as follows:

§ 167.45–45 Carbon dioxide fire extinguishing system requirements.

* * * * *

(d)(1) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(2) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(3) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(4) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(5) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(6) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

(e) Each carbon dioxide extinguishing system installed or altered after [July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

■ 117. In § 167.55–5, add paragraphs (c)(1) and (2) to read as follows:

§ 167.55–5 Marking of fire and emergency equipment.

* * * * *

(c) * * *

(1) *Steam, foam, carbon dioxide, Halon, or clean agent fire smothering apparatus.* Steam, foam, carbon dioxide, Halon, or clean agent fire smothering apparatus must be marked ''[STEAM/FOAM/CARBON DIOXIDE/HALON/CLEAN AGENT—as appropriate] FIRE APPARATUS,'' in red letters at least 2 inches high, and the valves of all branch piping leading to the several compartments must be distinctly marked to indicate the compartments or parts of the nautical school ship to which they lead.

(2) Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(i) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(ii) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(iii) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

* * * * *

PART 169—SAILING SCHOOL VESSELS

■ 118. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

■ 119. In § 169.101, revise the section heading and add a second sentence to read as follows:

§ 169.101 Purpose; preemptive effect.

* * * The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 120. In § 169.247, revise Table 169.247(a)(2) and add reserved paragraph (b) to read as follows:

§ 169.247 Firefighting equipment.

* * * * *

TABLE 169.247(a)(2)—FIXED SYSTEMS

Type system	Test
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.
Halon 1301 or halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. Note that Halon 1301 system approvals have expired, but that existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

(b) [Reserved].

■ 121. Revise § 169.564 to read as follows:

§ 169.564 Fixed extinguishing system, general.

(a) A fixed carbon dioxide, Halon 1301, or clean agent extinguishing system must be installed to protect the following spaces:

(1) Any vessel machinery or fuel tank space, except where the space is so open to the atmosphere as to make the use of a fixed system ineffective;

(2) Any paint or oil room, or similar hazardous space; and

(3) Any galley stove area on a vessel greater than 90 feet in length and certificated for exposed or partially protected water service.

(b) Each fixed extinguishing system must be of an approved carbon dioxide, Halon 1301, halogenated, or clean agent type and installed to the satisfaction of the Officer in Charge, Marine Inspection.

■ 122. Add § 169.570 to read as follows:

§ 169.570 Lockout valves.

(a) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after [July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(b) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(c) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(d) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(e) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(f) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

■ 123. Add § 169.571 to read as follows:

§ 169.571 Odorizing units.

Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

■ 124. Revise § 169.732 to read as follows:

§ 169.732 Carbon dioxide and clean agent alarms.

(a) Each carbon dioxide or clean agent fire extinguishing alarm must be conspicuously marked: ''WHEN ALARM SOUNDS VACATE AT ONCE. CARBON DIOXIDE OR CLEAN AGENT BEING RELEASED.''.

(b) Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(1) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(2) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(3) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 125. Revise § 169.734 to read as follows:

§ 169.734 Fire extinguishing system controls.

Each control cabinet or space containing valves or manifolds for the various fire extinguishing systems must be distinctly marked in conspicuous red letters at least 2 inches high: ''CARBON DIOXIDE FIRE EXTINGUISHING SYSTEM,'' ''HALON EXTINGUISHING SYSTEM,'' or ''CLEAN AGENT EXTINGUISHING SYSTEM,'' as appropriate.

PART 176—INSPECTION AND CERTIFICATION

■ 126. The authority citation for part 176 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 127. In subpart A, revise the subpart A heading to read as follows:

Subpart A—General Provisions; Certificate of Inspection

§§ 176.2 through 176.99 [Reserved]

■ 128. Add reserved §§ 176.2 through 176.99 and add § 176.1 to read as follows:

§ 176.1 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 129. In § 176.810, revise paragraph (b)(2) to read as follows:

§ 176.810 Fire protection.

* * * * *

(b) * * *

(2) For semiportable and fixed gas fire extinguishing systems, the inspections and tests required by Table 176.810(b)(2), in addition to the tests required by 46 CFR 147.60, 147.65, 147.66, and 147.67. The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any equipment or record has not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests.

TABLE 176.810(b)(2)—SEMIPORTABLE AND FIXED FIRE EXTINGUISHING SYSTEMS

Type system	Test
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.
Halon 1301 and halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. Note that Halon 1301 system approvals have expired, but that existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Dry chemical (cartridge operated)	Examine pressure cartridge and replace if end is punctured or if determined to have leaked or to be in unsuitable condition. Inspect hose and nozzle to see if they are clear. Insert charged cartridge. Ensure dry chemical is free flowing (not caked) and extinguisher contains full charge.
Dry chemical (stored pressure)	See that pressure gauge is in operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low or if dry chemical is needed.
Foam (stored pressure)	See that any pressure gauge is in the operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

PART 181—FIRE PROTECTION EQUIPMENT

■ 130. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 131. In § 181.115, revise the section heading and add paragraph (d) to read as follows:

§ 181.115 Applicability; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 132. In § 181.410, revise paragraph (c)(7) and add paragraphs (f)(7) and (8) to read as follows:

§ 181.410 Fixed gas fire extinguishing systems.

* * * * *

(c) * * *

(7) A Halon 1301 storage cylinder must be stowed in an upright position unless otherwise listed by the independent laboratory. A carbon dioxide cylinder may not be inclined more than 30° from the vertical unless fitted with flexible or bent siphon tubes, in which case it may be inclined not more than 80° from the vertical. Cylinders for clean agent systems must be installed in an upright position unless otherwise specified in the system's instruction manual.

(f) * * *

(7) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after [July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(i) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(ii) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(iii) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(iv) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(v) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

(8) Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

* * * * *

PART 182—MACHINERY INSTALLATION

■ 133. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 134. In § 182.115, revise the section heading and add paragraph (e) to read as follows:

§ 182.115 Applicability; preemptive effect.

* * * * *

(e) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 135. In § 182.710, revise paragraph (a)(3) to read as follows:

§ 182.710 Piping for vital systems.

(a) * * *

(3) Carbon dioxide, Halon 1301, and clean agent systems;

* * * * *

PART 185—OPERATIONS

■ 136. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 137. In § 185.115, revise the section heading and add paragraph (d) to read as follows:

§ 185.115 Applicability; preemptive effect.

* * * * *

(d) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 138. Amend § 185.612 by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 185.612 Fire protection equipment.

* * * * *

(f) The control cabinets or spaces containing valves, manifolds or controls for the various fire extinguishing systems must be marked in conspicuous red letters at least 2 inches high: ''[STEAM/CARBON DIOXIDE/CLEAN AGENT/FOAM/WATER SPRAY—as appropriate] FIRE APPARATUS.''.

(g) Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(1) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(2) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(3) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

PART 189—INSPECTION AND CERTIFICATION

■ 139. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 140. Revise the 189.01 subpart heading to read as follows:

Subpart 189.01—General Provisions; Certificate of Inspection

§ 189.01–1 [Redesignated as § 189.01–2]

■ 141. Redesignate existing § 189.01–1 as § 189.01–2, and add new § 189.01–1 to read as follows:

§ 189.01–1 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 142. In § 189.25–20, revise the section heading and Table 189.25–20(a)(2) to read as follows:

§ 189.25–20 Fire extinguishing equipment.

* * * * *

TABLE 189.25–20(a)(2)

Type system	Test
Foam	Systems utilizing a soda solution must have such solution replaced. In all cases, ascertain that powder is not caked.
Carbon dioxide	Weigh cylinders. Recharge cylinder if weight loss exceeds 10 percent of the weight of the charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by 46 CFR 147.60 and 147.65.
Halon 1301 or halocarbon	Recharge or replace if weight loss exceeds 5 percent of the weight of the charge or if cylinder has a pressure gauge, recharge cylinder if pressure loss exceeds 10 percent, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections to Halon 1301 and halocarbon cylinders must be tested or renewed, as required by 46 CFR 147.60 and 147.65 or 147.67. Note that Halon 1301 system approvals have expired, but that existing systems may be retained if they are in good and serviceable condition to the satisfaction of the Coast Guard inspector.
Inert gas	Recharge or replace cylinder if cylinder pressure loss exceeds 5 percent of the specified gauge pressure, adjusted for temperature. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses for damage or decay. Ensure that nozzles are unobstructed. Cylinders must be tested and marked, and all flexible connections on fixed inert extinguishers must be tested or renewed as required by 46 CFR 147.60 and 147.66.
Water mist	Maintain system in accordance with the maintenance instructions in the system manufacturer's design, installation, operation, and maintenance manual.

* * * * *

■ 143. In § 189.55–5, revise paragraph (d)(4) to read as follows:

§ 189.55–5 Plans and specifications required for new construction.

* * * * *

(d) * * *

(4) Details of extinguishing systems, including fire mains, carbon dioxide, clean agent, foam, and sprinkling systems.

* * * * *

PART 190—CONSTRUCTION AND ARRANGEMENT

■ 144. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 145. Add new subpart 190.00, consisting of § 190.00–1, to read as follows:

Subpart 190.00—General Provisions

§ 190.00–1 Preemptive effect.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 146. In § 190.15–5, revise paragraph (i) to read as follows:

§ 190.15–5 Vessels using fuel having a flashpoint of 110 °F or lower.

* * * * *

(i) Provisions must be made for closing all cowls or scoops when the fixed carbon dioxide or clean agent system is operated.

PART 193—FIRE PROTECTION EQUIPMENT

■ 147. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 148. In § 193.01–1, revise the section heading and add paragraph (c) to read as follows:

§ 193.01–1 General; preemptive effect.

* * * * *

(c) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 149. Revise § 193.05–10 to read as follows:

§ 193.05–10 Fixed fire extinguishing systems.

(a) Approved fire extinguishing systems must be installed in all lamp and paint lockers, oil rooms, and similar spaces.

(b) A fixed carbon dioxide or clean agent fire extinguishing system complying with 46 CFR subparts 95.15 and 95.16 must be installed for:

(1) Internal combustion engine installations;

(2) Gas turbine installations;

(3) Enclosed spaces containing gasoline engines;

(4) Chemical storerooms;

(5) Any space containing auxiliaries with an aggregate power of 1,000 brake horsepower (b.h.p.) or greater, or their fuel oil units, including purifiers, valves, and manifolds, on vessels of 1,000 gross tons and over; and

(6) Enclosed ventilating systems installed for electric propulsion motors or generators.

(c) On vessels of 1,000 gross tons and over, a fixed carbon dioxide or clean agent fire extinguishing system complying with 46 CFR subparts 95.15 and 95.16 or a foam system complying with 46 CFR subpart 95.17 must be installed for any space containing main or auxiliary oil fired boilers or their associated fuel oil units, valves, or manifolds in the line between the settling tanks and the boilers.

(d) Systems for spaces containing explosives and other dangerous articles or substances must also comply with 46 CFR part 194.

■ 150. In § 193.10–5, revise the section heading and paragraph (h) to read as follows:

§ 193.10–5 Fire main system, details.

* * * * *

(h) On vessels with main or auxiliary oil fired boilers or vessels with internal combustion propulsion machinery, when two fire pumps are required, the boilers or machinery must be located in separate spaces, and the arrangement, pumps, sea connections, and sources of power must be such as to ensure that a fire in any one space will not put all of the fire pumps out of operation. However, when it is shown to the satisfaction of the Commandant that it is unreasonable or impracticable to meet this requirement due to the size or arrangement of the vessel, or for other reasons, the installation of a total flooding system using carbon dioxide or a clean agent complying with 46 CFR subpart 95.16 may be accepted as an alternate method of extinguishing any fire that could affect the powering and operation for the required fire pumps.

* * * * *

■ 151. Revise the heading to subpart 193.15 to read as follows:

Subpart 193.15—Carbon Dioxide and Clean Agent Extinguishing Systems, Details

* * * * *

■ 152. Add § 193.15–16 to read as follows:

§ 193.15–16 Lockout valves.

(a) A lockout valve must be provided on any carbon dioxide extinguishing system protecting a space over 6,000 cubic feet in volume and installed or altered after [July 9, 2013. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

(b) The lockout valve must be a manually operated valve located in the discharge manifold prior to the stop valve or selector valves. When in the closed position, the lockout valve must provide complete isolation of the system from the protected space or spaces, making it impossible for carbon dioxide to discharge in the event of equipment failure during maintenance.

(c) The lockout valve design or locking mechanism must make it obvious whether the valve is open or closed.

(d) A valve is considered a lockout valve if it has a hasp or other means of attachment to which, or through which, a lock can be affixed, or it has a locking mechanism built into it.

(e) The master or person-in-charge must ensure that the valve is locked open at all times, except while maintenance is being performed on the extinguishing system, when the valve must be locked in the closed position.

(f) Lockout valves added to existing systems must be approved by the Commandant as part of the installed system.

■ 153. Add § 193.15–17 to read as follows:

§ 193.15–17 Odorizing units.

Each carbon dioxide extinguishing system installed or altered after July 9, 2013, must have an approved odorizing unit to produce the scent of wintergreen, the detection of which will serve as an indication that carbon dioxide gas is present in a protected area and any other area into which the carbon dioxide may migrate. ''Altered'' means modified or refurbished beyond the maintenance required by the manufacturer's design, installation, operation and maintenance manual.

■ 154. Add § 193.15–50 to read as follows:

§ 193.15–50 Clean agent systems.

A clean agent system complying with 46 CFR subpart 95.16 may be used as an alternative to a carbon dioxide fire extinguishing system.

PART 194—HANDLING, USE, AND CONTROL OF EXPLOSIVES AND OTHER HAZARDOUS MATERIALS

■ 155. The authority citation for part 194 continues to read as follows:

Authority: 46 U.S.C. 2103, 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 156. In § 194.01–1, revise the section heading and add paragraph (e) to read as follows:

§ 194.01–1 General; preemptive effect.

* * * * *

(e) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 157. In § 194.20–7, revise paragraph (a) to read as follows:

§ 194.20–7 Fire protection.

(a) Each chemical storeroom must be protected by a fixed automatic extinguishing system using carbon dioxide or a clean agent complying with 46 CFR subpart 95.16, installed in accordance with 46 CFR subpart 193.15.

* * * * *

PART 196—OPERATIONS

■ 158. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 159. In § 196.01–1, revise the section heading and add paragraph (b) to read as follows:

§ 196.01–1 General; preemptive effect.

* * * * *

(b) The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 160. Add § 196.37–8 to read as follows:

§ 196.37–8 Carbon dioxide warning signs.

Each entrance to a space storing carbon dioxide cylinders, a space protected by carbon dioxide systems, or any space into which carbon dioxide might migrate must be conspicuously marked as follows:

(a) Spaces storing carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. VENTILATE THE AREA BEFORE ENTERING. A HIGH CONCENTRATION CAN OCCUR IN THIS AREA AND CAN CAUSE SUFFOCATION.''.

(b) Spaces protected by carbon dioxide—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED, DO NOT ENTER UNTIL VENTILATED. LOCK OUT SYSTEM WHEN SERVICING.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

(c) Spaces into which carbon dioxide might migrate—''CARBON DIOXIDE GAS CAN CAUSE INJURY OR DEATH. DISCHARGE INTO NEARBY SPACE CAN COLLECT HERE. WHEN ALARM OPERATES OR WINTERGREEN SCENT IS DETECTED VACATE IMMEDIATELY.'' The reference to wintergreen scent may be omitted for carbon dioxide systems not required to have odorizing units and not equipped with such units.

■ 161. Revise § 196.37–9 to read as follows:

§ 196.37–9 Carbon dioxide and clean agent alarms.

Each extinguishing system using carbon dioxide or clean agent complying with 46 CFR subpart 95.16 must be conspicuously marked in an adjacent location: ''WHEN ALARM SOUNDS VACATE AT ONCE. CARBON DIOXIDE OR CLEAN AGENT BEING RELEASED.''.

■ 162. Revise § 196.37–13 to read as follows:

§ 196.37–13 Fire extinguishing system controls.

The control cabinets or spaces containing valves, manifolds, or controls for the various fire extinguishing systems must be marked in conspicuous red letters at least 2 inches high: ''[CARBON DIOXIDE/CLEAN AGENT/FOAM—as appropriate] FIRE APPARATUS.''.

Dated: March 1, 2012.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards.

[FR Doc. 2012–12334 Filed 6–6–12; 8:45 am]

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Part IV

Federal Communications Commission

47 CFR Part 54
Universal Service Contribution Methodology; a National Broadband Plan for Our Future; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 06–122; GN Docket No. 09–51; FCC 12–46]

Universal Service Contribution Methodology; a National Broadband Plan for Our Future

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks public comment on approaches to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered. The Commission seeks comment on ways to reform the USF contribution system in an effort to promote efficiency, fairness, and sustainability. The Commission seeks comment on proposals in four key areas regarding the contributions system: Who should contribute to the Fund; how contributions should be assessed; how the administration of the contribution system can be improved; and recovery of universal service contributions from consumers.

DATES: Comments are due on or before July 9, 2012 and reply comments are due on or before August 6, 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: You may submit comments, identified by WC Docket Nos. 06–122; GN Docket No. 09–51, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Vickie Robinson, Wireline Competition Bureau, (202) 418–2732 or Ernesto Beckford, Wireline Competition Bureau, (202) 418–1523 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (NPRM) in WC Docket No. 06–122, and GN Docket No. 09–51, FCC 12–46, adopted April 27, 2012, and released April 30, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
  - *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street SW., Room CY–B402, Washington, DC 20554; Web site: *www.bcpiweb.com;* phone: 1–800–378–3160. Furthermore, three copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com,* by email at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (tty), or by facsimile at (202) 488–5563.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request

reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov;* phone: (202) 418–0530 or TTY: (202) 418–0432.

For further information regarding this proceeding, contact Vickie Robinson, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-2732, *vickie.robinson@fcc.gov*, or Ernesto Beckford, Attorney Advisor, Wireline Competition Bureau at (202) 418–1523, *ernesto.beckford@fcc.gov.*

I. Summary

A. Who should contribute to Universal Service

1. Statutory Authority To Require Contributions

1. Under section 254(d) of the Act, the Commission has mandatory authority to require contributions to the Fund, ''[E]very telecommunications carrier that provides interstate telecommunications services.'' In addition, the Commission has ''permissive'' authority that extends to ''any * * * provider of interstate telecommunications * * * if the public interest so requires.'' Over time, the Commission has periodically exercised its permissive authority to extend contribution obligations to particular classes of providers on a service-specific basis. We seek comment on the scope of our permissive authority, including how we should interpret the statutory terms that define that authority.

a. ''Provider of Interstate Telecommunications''

2. We seek comment on how we should interpret the terms ''providing'' and ''telecommunications'' and whether it is appropriate to revisit any previous Commission interpretations based on the evolution of the industry and significant marketplace changes over the last decade.

3. In exercising our permissive authority, we must determine whether an entity is a ''provider'' of interstate telecommunications as specified in section 254(d). Although Congress has not defined the terms ''provide,'' ''provider,'' or ''provision,'' the Commission has addressed these terms in several orders. First, the Commission has concluded that ''provide'' is a different term from ''offer.'' The Commission has drawn a distinction between what is ''offered'' from a demand perspective (*i.e.,* what the customer perceives to be the integrated product), and what is ''provided'' from a supply perspective *i.e.,* what the provider is furnishing or supplying to the end user, including not only the integrated product but also the discrete components of the product). Second, the Commission has previously held that ''provide'' is broader than ''offer.'' Under this view, an entity may both ''provide'' and ''offer'' telecommunications, but an entity may also provide telecommunications without offering telecommunications. Many participants in today's marketplace do not separately offer telecommunications to end users, but instead offer integrated services that include both telecommunications (*i.e.,* transmission) and non-telecommunications components. For such integrated services, however, the service provider still ''provides'' telecommunications as part of the ''offering.'' The D.C. Circuit has upheld the Commission's interpretation. In light of the marketplace changes over the last decade, should the Commission revisit its interpretation of what it means to ''provide'' or to be a ''provider of'' telecommunications?

4. *Telecommunications.* The Act defines the term ''telecommunications'' as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' Here and in Section IV.C below, we seek comment on how we should interpret each component of this definition for purposes of potentially exercising our permissive authority.

b. ''If the Public Interest So Requires''

5. We seek comment on what factors we should consider in deciding whether the public interest warrants exercising our permissive authority. We seek comment generally on whether the public interest would be served, and to what extent exercising our permissive authority would achieve any or all of the goals set forth above—efficiency, fairness, and sustainability. For example, is it in the public interest to exercise permissive authority over a provider of telecommunications if the telecommunications is part of a service that competes with or is used by consumers or businesses in lieu of telecommunications services that are subject to assessment? In the past, the Commission has stated that the principle of competitive neutrality dictates that it should assess contributions from entities that are not mandatory contributors, but benefit from access to the PSTN. Is that consideration relevant in today's marketplace? Should we assess providers of services that are capturing a growing portion of overall communications spending as a means of achieving sustainability? Should we consider whether those services are being used in ways that may replace, partially or wholly, services that are subject to mandatory assessment? Does the public interest analysis differ depending on whether we are considering consumer services or business/enterprise services? What other factors should we take into account?

2. Determining Contribution Obligations on a Case-by-Case Basis With Respect to Providers of Specific Services

6. We seek comment on whether and if so, to what extent, the Commission should exercise its permissive authority contained in section 254(d) of the Act to clarify or modify contribution requirements for providers of several specific services, or if we should otherwise modify or clarify the contribution obligations of such services. As discussed above, the Commission has exercised its permissive authority on several occasions to expand or clarify contribution obligations on a service-specific basis. In the *Universal Service First Report and Order,* 62 FR 32862, June 17, 1997, it required private line service providers and payphone aggregators to contribute to the Fund, reasoning that the services offered by these entities rely on access to the PSTN and compete with services offered by mandatory contributors to the Fund *(i.e.,* common carriers). In 2006, the Commission assessed interconnected VoIP services without reaching the statutory classification of such services. The Commission concluded that deciding the statutory classification was unnecessary, because even if interconnected VoIP services did not fall under the mandatory contribution provision of section 254(d), it was appropriate to assess such services as an exercise of permissive authority. The Commission determined that an immediate extension of contribution obligations to interconnected VoIP service was warranted due to the growth in demand for the Fund, the decline in the contribution base overall, and the ''robust growth in subscribership'' to interconnected VoIP services, from 150,000 subscribers in 2003 to 4.2 million subscribers in 2005.

7. We seek comment on continuing this general approach of addressing the contribution obligations of specific services on a service-by-service basis. First, we seek comment on exercising permissive authority with respect to certain services for which contribution

obligations are currently subject to dispute. To the extent commenters believe that any such services should be non-assessable, we also seek comment on alternative approaches to clarifying contributions, including forbearing from any applicable contribution obligations to the extent these services are telecommunications services, and we seek comment on the effect of such approaches on the contribution base and the sustainability of the Fund. Second, we seek comment on exercising permissive authority with respect to other services that are clearly not currently assessable, but which various commenters have proposed should be assessed.

8. In particular, we seek comment on exercising our permissive authority to require contributions from providers of enterprise communications services that include interstate telecommunications; text messaging; one-way VoIP; and broadband Internet access services. Each of these services has found a significant niche in today's communications marketplace. The question of whether certain enterprise communications services are currently assessable as telecommunications services or non-assessable as information services has led to significant disputes, uncertainty, and incentives for providers to attempt to characterize their services in a particular way in order to avoid contribution requirements, resulting in a pending request for guidance from USAC regarding the treatment of certain services. Likewise, the question of whether text messaging is currently assessable has been disputed, and there is a pending request for guidance from USAC regarding text messaging. In contrast, one-way VoIP services and broadband Internet access services are clearly not in the contribution base today, although various parties have argued they should be assessed. We seek comment on these arguments.

9. We seek comment on addressing the contribution obligations of such services, regardless of their statutory classification as information services or telecommunications services, in order to provide clarity for contributors and greater stability for the Fund. We also seek comment on whether exercising our permissive authority would ensure that competitive services are not unfairly disadvantaged by disparate contribution obligations, while further simplifying the requirements imposed on contributors.

10. We seek comment on adopting the following rule, in whole or in part: *Providers of the following are subject to contributions: * * * Enterprise communications services that include a provision of telecommunications; Text messaging service; One-way VoIP service; and Broadband Internet access services.*

11. *Enterprise Communications Services Providers.* We seek comment on clarifying the contribution obligations of various enterprise communications services that include the provision of telecommunications, without classifying those services as telecommunication services or information services, to advance our proposed goals for contributions reform, namely, creating greater efficiency, fairness, and sustainability of the Fund.

12. We note that, as stated above, the Act defines telecommunications as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' The Commission has found that transmission is the heart of telecommunications, and has classified data transmission services that have ''traditionally'' and ''typically'' been used for basic transmission purposes, such as ''stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services,'' as telecommunications services.

13. We have not formally addressed enterprise communications services such as Dedicated IP, VPNs, WANs, and other network services that are implemented with various protocols such as Frame Relay/ATM, MPLS and PBB for purposes of determining USF contribution obligations. To the extent that such enterprise communications services would not fall within the definition of telecommunications services, should we exercise our permissive authority with respect to providers of those services? Are such enterprise communications services substitutes for other enterprise communications services that are subject to mandatory contributions, and would such an exercise of permissive authority increase clarity and fairness? If we were to exercise our permissive authority over enterprise communications services that may be information services, should we enumerate the specific services that would be subject to a contribution obligation, or should we attempt to craft a more general definition that would capture future generations of such services that deliver similar functionality, regardless of technology used, in order to promote the sustainability of the Fund? What would be the appropriate transition period for such changes?

14. If we choose to exercise our permissive authority in this fashion, how would that affect the size of the contribution base? To what extent would assessing enterprise communications services bring additional contributors into the system that do not otherwise contribute today directly or indirectly? How would an assessment of additional enterprise communications services affect the distribution of contribution obligations among various industry segments? How would such assessment affect the relative distribution of contribution obligations between services provided to enterprise and residential customers? How would such assessment affect the average contributions of different categories of residential end users, such as low-volume versus high-volume users, or vulnerable populations such as low-income consumers?

15. To the extent we conclude that Dedicated IP, VPNs, WANs, or other communications services for which contribution obligations have been in dispute should not be subject to contribution obligations, should we exercise our forbearance authority under section 10 of the Act to exempt these services from mandatory contribution insofar as they may be viewed as telecommunications services? How would that impact the current contribution base, and the relative distribution of contribution obligations between enterprise and residential consumers? Do these services differ from other explicitly assessed enterprise communications services in a way that makes their exemption from contribution appropriate, and would the section 10 criteria otherwise be met?

16. We note that the Commission has expressly declined to exercise permissive authority over systems integrators for whom telecommunications represents a small fraction (less than five percent) of total revenues derived from systems integration services. To the extent that we explicitly exercise our permissive authority to assess enterprise communications services, should we also eliminate the system integrators exemption, so that systems integrators would contribute even if their telecommunications revenues were under the current threshold? In the alternative, if we determine that we should clarify that certain enterprise communications services are not subject to contributions, should we modify the systems integrators exemption, and if so how? How would our decision to clarify the contribution obligations for any category of these services affect current contributions?

17. We seek comment on the size of the enterprise communications services marketplace, including comment on the Telecommunications Industry Association estimates, and whether this marketplace is likely to grow or shrink in the future. If commenters believe the estimates are too high or too low, they should provide specific data to more accurately size this segment of the communications marketplace. We also seek comment and data submissions on how assessing these services would affect the contribution base under the different methodologies proposed in the Notice. We seek comment and data on the extent to which service providers are currently treating these services as assessable. We seek comment on how revenues from such services should be apportioned into assessable and non-assessable segments if the Commission continues with a revenues-based methodology. We encourage commenters to provide comments and data regarding the structure of typical enterprise communications services contracts. In particular, we seek comment on whether such contracts typically break out costs for different parts of the services provided and, if so, how they generally do so.

18. *Text Messaging Providers.* We seek comment on whether text messaging services should be assessed in light of our proposed goals for contribution reform. To what extent is there a lack of clarity within the industry over whether such services are subject to universal service contributions? Would adopting a clear rule establishing that text messaging is in the contribution base further the Commission's efforts to promote fairness and competitive neutrality? If providers of text messaging services were required to contribute, would that create competitive distortions between text messaging service providers and providers that offer applications that allow users to send messages using a wireless customer's general data plan—applications that consumers may increasingly view as a substitute to text messaging? Given the rapid growth in the text messaging marketplace, a number of stakeholders have suggested in recent years that text messaging revenues should be added to the contribution base to enhance the sustainability of the Fund. To what extent would including these services in the contribution base add to the stability of the Fund? If we modified our rules to explicitly assess text messaging, what would be an appropriate transition period?

19. If we conclude text messaging services should be assessed, should we exercise the Commission's permissive authority under section 254(d) of the Act to assess providers of these services, without determining whether such services are telecommunications services or information services? Alternatively, if we conclude that text messaging services should not be assessed, should the Commission conclude that even if such services are telecommunications services, we should exercise our forbearance authority under section 10 of the Act to exempt text messaging from contribution obligations?

20. We seek comment on the extent to which consumers are substituting text messaging for traditional voice services and other services that are subject to universal service contributions. Are there any reasons to treat short message service (SMS) or multimedia messaging service (MMS) differently for this analysis? Commenters should provide data to support their assertions.

21. We also seek comment on whether wireless providers include revenues generated through the use of common short codes in their text messaging revenues. If common short code revenues are not reported as part of the text messaging revenues, are there any reasons to treat such revenues differently in calculating the universal service contributions?

22. We seek comment on the size of the text messaging marketplace, including the industry revenue figures referenced above, and whether this marketplace is likely to grow or shrink in the future. Commenters who disagree with the estimates above should submit specific revenue data to support their assertions.

23. To the extent commenters advocate a position on whether text messaging providers should be assessed, we view it as highly relevant whether those commenters earn text message revenues themselves and, if so, whether they have reported it as assessable in recent years. We thus ask commenters to include in their comments their estimated recent text messaging revenues, and the extent to which they reported those revenues as assessable. If we explicitly assess text messaging providers, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between services for enterprise and residential customers? How would it affect the total average impact of contributions on residential end users? How would it affect the distribution of obligations between low-volume and high-volume users? How would an assessment of text messaging providers affect the distribution of contribution obligations among various industry segments?

24. We also seek comment and data submissions on how assessing these providers of these services would affect the contribution base under the different methodologies proposed in Section V below. We note that to the extent that providers of text messaging also are providers of assessable voice services, explicitly assessing text messaging would not necessarily broaden the base; to the extent we were to adopt a non-revenues-based contribution methodology. We also seek comment and data on the extent to which service providers are currently treating these services as assessable.

25. *One-way VoIP Service Providers.* We seek comment on whether the Commission should exercise its permissive authority under section 254(d) to include in the contribution base providers of ''one-way'' VoIP with respect to such service offerings, regardless of the statutory classification of such services. Such offerings would include all services that provide users with the capability to originate calls to the PSTN *or* terminate calls from the PSTN, but in all other respects meet the definition of ''interconnected VoIP.'' We seek comment below on a potential definition of such services for the purpose of USF contributions: *One-way VoIP service. A service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network or terminate calls to the public switched telephone network.*

26. To what extent does this rationale apply today to one-way VoIP services? We note that one-way VoIP enables consumers to originate or terminate calls on the PSTN. Would the public interest be served by exercising permissive authority over one-way VoIP to further our proposed goals of efficiency, fairness and sustainability?

27. In particular, we seek comment on whether competitive neutrality concerns now support the inclusion of one-way VoIP services within the contribution base. Some parties argue that the one-way VoIP exemption is ''an enormous loophole'' that creates competitive disparities. We seek comment on the extent of competition between one-way VoIP and other services that are subject to assessment, and how that should affect our analysis. Commenters are encouraged to provide data to support

their analysis. If one-way VoIP providers are brought into the contribution base, what would be the appropriate transition period?

28. We seek comment on the size of the one-way VoIP marketplace in the United States, and whether this marketplace is likely to grow or shrink in the future. How many providers of one-way VoIP are there, and who are other major providers of such services? What are the overall U.S. revenues for this group of providers, and how many customers do they have? Commenters are encouraged to provide specific data to support their assertions. We also seek comment and data submissions on how assessing these services would affect the contribution base under the different methodologies proposed in section V below.

29. If we assess one-way VoIP, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between services for enterprise and residential customers? How would it affect the total average impact of contributions on residential end users? How would it affect the distribution of obligations between low-volume and high-volume users, and how would it impact low-income consumers? How would an assessment of one-way VoIP affect the distribution of contribution obligations among various industry segments? We seek comment on the relevance of precedent to the question of whether one-way providers should contribute to universal service.

30. Broadband Internet Access Service Providers. The State Members of the Federal-State Universal Service Joint Board (State Members of the Joint Board) have proposed that the Commission include ''broadband and services closely associated with the delivery of broadband'' in the base, including Digital Subscriber Line (DSL), cable, and wireless broadband Internet access. Other commenters also support extending assessments to broadband Internet access.

31. In 2002, the Commission sought comment on whether and how broadband Internet access service providers should contribute to universal service. In the *Wireline Broadband Internet Service Access Order,* 70 FR 60222, October 17, 2005, the Commission classified wireline broadband Internet access as an information service. The Commission also recognized, however, that wireline broadband Internet access service includes a provision of telecommunications. In the *Wireline Broadband Internet Access Order,* the Commission stated that it intended to address contribution obligations for providers of broadband Internet access in a comprehensive fashion in the future, either in that docket or in this docket.

32. Some commenters have suggested that the Commission should exercise its permissive authority to assess providers of broadband Internet access services. Several parties, however, have expressed concern that assessing broadband Internet access could discourage broadband adoption. We seek comment on those concerns and invite commenters to submit empirical data into the record of this proceeding regarding the potential impact of assessing broadband Internet access services on consumer adoption or usage of services. Would assessing broadband Internet access service in the near term undermine the goals of universal service? Could the Commission address such concerns by phasing in contributions for mass market broadband Internet access services over time?

33. In the *USF/ICC Transformation Order,* 76 FR 76623, December 8, 2011, we adopted new rules to ensure that robust and affordable voice and broadband, both fixed and mobile, are available to Americans throughout the nation. In this proceeding, we are looking to update and modernize the method by which funds are collected to support universal service. Some have expressed concern that assessing broadband Internet access may indirectly raise the price of broadband Internet access for some consumers. To what extent, if any, would assessing broadband services discourage consumers from subscribing? To what extent, if any, would that in turn slow down deployment of broadband infrastructure? We seek comments and economic analyses that address the overall effect on broadband deployment of assessing or not assessing broadband.

34. The State Members of the Joint Board recommend that both telecommunications services and information services (such as broadband Internet access services) should be assessed and suggest that if most of the revenues currently reported on FCC Form 499 Line 418 were assessed, that would reduce the contribution factor to approximately two percent. They also suggest this would simplify billing ''since the new federal USF surcharge rate would generally apply to an end user's total bill.'' We seek comment on this recommendation of the State Members of the Joint Board. Would such an approach make telecommunications more affordable for consumers with lower overall telecommunications expenditures? What is the relationship between household income and the percentage of a household's telecommunications bill subject to assessment under the current system, and what would it be under the State Members' proposed approach? Would such an approach affect consumer adoption of telecommunications services that are not currently assessed? We ask commenters to provide any analysis and data regarding their estimated reduction in the contribution factor, if we were to require contributions based on the total bill. If we were to assess broadband Internet access, to what extent would that reduce the contribution factor if we maintain a revenue-based methodology?

35. If the Commission does assess broadband Internet access service, now or at some point in the future, should the Commission assess all forms of broadband Internet access, including wired (including over cable, telephone, and power-line networks), satellite, and fixed and mobile wireless? Should it assess mass market broadband Internet access as well as enterprise broadband Internet access? As a practical matter, how would the Commission differentiate between mass market broadband Internet access, and other forms of broadband Internet access, and would such a distinction create any distortions in the marketplace?

36. We note that TIA estimates the wired broadband Internet access marketplace to be $38.3 billion in 2011 and $40.3 billion in 2012, and the marketplace for wireless data services to be $73.6 billion in 2011 and $89.8 billion in 2012. TIA also projects wireless data services to be over $140 billion, or double that for wireless voice, by 2015. It is not clear; however, from how TIA presents the data whether its estimates include both enterprise as well as mass market broadband Internet access. To what extent are any of these revenues in the contribution base today? What proportion of those revenues should be considered mass market broadband Internet access, if we were to retain a revenues-based system but adopt an approach that would exempt mass market broadband Internet access services from contribution obligations? Under such an approach, how should we define ''mass market''?

37. We also seek comment on whether exercising our permissive authority with respect to broadband Internet access services would be consistent with the Act and our potential goals for contributions reform, namely, creating greater efficiency, fairness, sustainability, and other goals that

commenters identify. If we assess broadband Internet access services, how would that affect the size of the contribution base? How would such assessment affect the distribution of contribution obligations between enterprise and mass market customers if we assess only enterprise broadband Internet access services, only mass market broadband Internet access services, or all broadband Internet access services? How would these different approaches to assessing broadband Internet access services affect the total average contribution impact for mass market end users? How would they affect the distribution of contribution obligations between services offered to low-volume and high-volume users, or between low-income and higher-income users? How would an assessment of broadband Internet access services affect the distribution of contributions among various industry segments? Would assessing retail broadband Internet access service eliminate the current competitive disparity that exists today between providers that contribute on their broadband transmission (small rate of return companies) and their competitors, who do not?

38. *Listing of Services Subject to Universal Service Contribution Assessment.* Section 54.706 of our rules sets forth a non-exhaustive list of services that are currently included in the contribution base. Should we continue to specify in our codified regulations specific services that are subject to assessment? Should that list be updated to reflect marketplace changes over the last decade? Does it advance our potential goals for reform of providing predictability and simplifying compliance and administration to maintain a non-exhaustive list of services that are subject to contributions, which by definition does not provide clarity as to whether services not on the list are subject to contribution obligations? Could we adopt a simpler approach that is flexible enough to be applied to services that exist today and ones that will emerge in the future, without a need to continually update our codified rules? Should the Commission periodically set forth a list of assessable services, similar to the eligible services list used for the schools and libraries universal service support mechanism?

3. Determining Contribution Obligations Through a Broader Definitional Approach

39. In the previous section, we inquired about using our section 254(d) permissive authority or other tools to modify or clarify the contribution obligations of providers of specific services. In this section, we seek comment on an alternative approach: exercising our permissive authority to craft a general rule that would specify which ''providers of interstate telecommunications'' must contribute, without enumerating the specific services subject to assessment. Like the approach discussed above, such a rule would not require us to resolve the statutory classification of specific services as information services or telecommunications services in order to conclude that contributions should be assessed. Such a rule could potentially produce a more sustainable contribution system by avoiding the need to continually update a list of specific services subject to assessment. At the same time, such an approach leaves open the possibility of carving out or excluding a specifically defined list of providers or services, if inclusion of those providers or services is not in the public interest.

40. For example, we seek comment on exercising our permissive authority to adopt a rule such as the following: *Any interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users.*

41. This rule is intended to encompass only entities that provide transmission to their users, whether using their own facilities or by utilizing transmission service purchased from other entities. As discussed above, the provision of ''telecommunications'' means, in part, the provision of transmission capability. Under the approach historically taken by the Commission, some, but not all, providers of information services ''provide'' telecommunications. By statutory definition, an information service provider offers the ''capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.'' In the past, the Commission has found that the telecommunications component may be provided by the information services provider *or* the customer. In other words, some information service providers ''provide'' the telecommunications required to utilize the information service, but others require their customers to ''bring their own telecommunications'' (in other words, to ''bring their own transmission capability''). The rule set forth above is intended to include entities that provide transmission capability to their users, whether through their own facilities or through incorporation of services purchased from others, but not to include entities that require their users to ''bring their own'' transmission capability in order to use a service. This is consistent with Commission precedent where the Commission has exercised its permissive authority to extend USF contribution requirements to providers of telecommunications that are competing directly with common carriers. We seek comment on whether the rule would achieve this intended result. To the extent the rule above would not achieve this intended result; we seek comment on how the rule could be altered to achieve this result.

42. We seek comment on whether a rule such as the one above would further our proposed goals of contributions reform by improving efficiency, fairness, and the sustainability of the Fund. Would adopting such a rule provide sufficient guidance to potential contributors regarding their contribution obligation? Would such a rule be simple to administer, monitor, and enforce? Would it create market distortions or impede innovation?

43. The National Broadband Plan recommended that however the Commission chooses to reform contribution methodology, it should take steps to minimize opportunities for arbitrage as new products and services are developed, so that there is no need to continuously update regulations to catch up with changes in the market. Would a rule like the one discussed above achieve these goals, minimizing opportunities for arbitrage and eliminating the need to continuously update regulations? Or, alternatively, would it result in new definitional disputes and potential uncertainty?

44. Could the above rule be read to make content fees assessable when content is provided by the provider of the interstate telecommunications? For example, could an IP-based video-on-demand service be assessable? We note that cable services are regulated under Title VI of the Act, and that video service providers are currently only required to contribute to the extent they provide interstate telecommunications services or other assessable telecommunications. We also note that many video-on-demand services are being provided through Internet web sites, and thus are services that require the viewer to bring their own ''telecommunications'' (*i.e.,* Internet access). Could the above definition lead to the assessment of any other services that compete largely or primarily against services that remain non-assessable? If

so, would this lead to competitive distortions? How could the definition be altered to avoid this result?

45. As noted above, the Commission has determined that ''over-the-top'' interconnected VoIP providers provide transmission to or from the PSTN to end users, and has subjected these services to contribution obligations. Even where a user obtains Internet access from an independent third party to use an interconnected VoIP service, an over-the-top interconnected VoIP provider must still supply termination to the PSTN for outgoing calls (which is not covered by the Internet access service), and origination from the PSTN for incoming calls (which again is not covered by the Internet access service). Over-the-top VoIP providers generally purchase this access to the PSTN from a telecommunications carrier who accepts outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider's media gateway. The Commission held that origination or termination of a communication via the PSTN is ''telecommunications,'' and over-the-top interconnected VoIP providers, like other resellers, are providing telecommunications when they provide their users with the ability to originate or terminate a communication via the PSTN, regardless of whether they do so via their own facilities or obtain transmission from third parties. Are there legal or policy considerations that would warrant revisiting those rationales, if we were to exercise our permissive authority as set forth above? Are there reasons to extend or not extend the rationale above to other services that provide origination or termination of a communication via the PSTN? Would interconnected VoIP providers fall under the definition of an assessable service set forth in this section? If the objective is to include only entities that provide a physical connection (wired or wireless), should we consider entities that provide PSTN origination or termination to be included within that group? If not, should we alter the proposed definition, or should we add some additional provisions specifically including additional services, like interconnected VoIP or other services that are substitutable for assessable services, for assessment?

46. The State Members of the Joint Board have proposed an alternative broad definition, recommending that the Commission exercise its permissive authority to broaden the contributions base to include ''all services that touch the public communications network.'' The State Members conclude, however, that contributions should not be required for ''pure content delivered by non-telecommunications over broadband facilities.'' They acknowledge that their proposed rule could result in difficult line drawing problems when the same company sells both broadband services and content. We seek comment on the State Members' proposal.

47. *Potential Exclusions.* If we were to adopt a rule such as the one above, we seek comment on whether we should adopt any additional limitations.

48. *Non-Facilities-Based Providers:* The rule discussed above would assess providers of interstate telecommunications whether or not they own the physical facility, or hold license to the spectrum, that is used to provide interstate telecommunications. In the alternative, should we limit contribution obligations to facilities-based providers, and if so, how should we define ''facilities-based''? For example, would a provider be considered ''facilities-based'' for contributions purposes if it provides service only partially over its own facilities? Should we define ''facilities-based'' services for contributions purposes as those provided over unbundled network elements, special access lines, and other leased lines and wireless channels that the provider obtains from another communications services provider? For example, EarthLink has suggested that non-facilities-based providers of Internet access service do not provide the ''transmission service.'' We seek comment on this viewpoint. The Commission's contribution methodology has never exempted non-facilities-based telecommunications providers from their obligation to contribute, and the Act does not itself distinguish between facilities-based and non-facilities-based telecommunications providers for purposes of contribution obligations. We note that the Commission has previously found resellers to be telecommunications carriers supplying telecommunications services to their customers even though they do not own or operate the transmission facilities. Carriers that incorporate transmission obtained from other providers into their own telecommunications services are currently subject to contribution requirements under the mandatory contribution requirement in section 254(d). Likewise, firms contribute today when they resell private line service provided by other carriers. Are there policy or administrative reasons not to exercise permissive authority over entities that incorporate telecommunications purchased from others into their own service offerings?

49. *Broadband Internet Access:* If we were to adopt a rule such as the one above, should we exclude broadband Internet access service? Several parties have expressed concern that assessing broadband Internet access could discourage broadband adoption. As described above, we seek comment on those concerns and invite commenters to submit empirical data into the record of this proceeding regarding the impact of assessing broadband Internet access services on consumer or business adoption or usage of services. To what extent would assessment of universal service contribution obligations potentially deter adoption of such services? Is there less likelihood that assessment of USF contributions would deter adoption of business broadband Internet access services?

50. To the extent commenters believe that assessing mass market broadband Internet access service in particular could discourage broadband adoption or harm other Commission goals, we seek comment on a specific exemption for mass market broadband Internet access services (both fixed and mobile). If we were to take such an approach, how should we define enterprise versus mass market services, and from an administrative standpoint, how would carriers and USAC be able to distinguish between the two? To what extent would such an exemption potentially distort how business and residential broadband Internet access is provided, as carriers may seek to characterize their offerings as ''mass market'' to avoid contribution obligations?

51. *Free or Advertising-Supported Services:* If we were to adopt a rule such as the one above, should we do so only with respect to providers that offer service for a subscription fee? Given the broad meaning of ''fee'' in other contexts, how would we frame an exclusion for free or advertising-supported services? Would such an exclusion potentially cause marketplace distortions vis-à-vis firms that have business models that derive revenues from other sources, such as advertising revenues? Would imposing contribution obligations on free or advertising-supported services from contribution obligations discourage innovative offerings? Commenters should provide specific examples and supporting data regarding the business models of relevant services.

52. *Machine-to-Machine Connections:* If we were to adopt a rule such as the one above, should we exclude machine-to-machine services? Machine-to-machine connections have grown

rapidly in recent years. Would it be consistent with our statutory authority to exercise permissive authority over machine-to-machine communications, such as smart meter/smart grids, remote health monitoring, or remote home security systems? Should machine-to-machine connections be treated the same as connections between or among people? As discussed above, the Act defines the term ''telecommunications'' as ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.'' In the case of machine-to-machine communications, who is the ''user'' that is specifying where the information should go? Is there any precedent outside the contribution methodology context that should inform our interpretation of the statutory term here? Should we conclude that all machine-to-machine connections that transmit information over the Internet include interstate telecommunications? How would assessing machine-to-machine communications impact marketplace innovation in this arena?

53. *Statutory Interpretation.* Above, we asked whether a general rule like that described in this section would provide sufficient guidance to potential contributors regarding their contribution obligation. The rule described in this section would not require us to resolve the statutory classification of specific services as information services or telecommunications services in order to conclude that contributions should be assessed. The Commission would, however, still be required to determine whether services involved the provision of interstate ''telecommunications.'' We seek comment on additional issues that may arise in interpreting the definition of ''telecommunications'' for contributions purposes as the communications marketplace evolves. We also ask how resolution of these questions in the context of USF contributions would impact other regulatory obligations, such as regulatory fees or other assessments that utilize the Telecommunications Reporting Worksheets.

54. First, we seek comment on how to interpret the statutory requirement that a telecommunications transmission must be ''between or among points specified by the user.'' In particular, we seek comment on whether we should interpret ''the user'' to be a subscriber to the service in question. For example, suppose that Bookseller A sells an electronic reading device to Ms. Smith. The price of the device includes a 3G wireless connection that allows Ms. Smith to connect to Bookseller A's servers at any time and purchase e-books. Bookseller A, in turn, purchases the wireless bandwidth for the connection from Carrier B. In this instance, should we consider Ms. Smith to be the ''user'' of the service provided by Bookseller A? Alternatively, is Bookseller A the ''user'' of the service provided by Carrier B? Under the former view, would Bookseller A be viewed as ''providing telecommunications'' to Ms. Smith, and therefore a contributor on that service? Or should Carrier B be viewed as the entity that is providing telecommunications to Bookseller A, and therefore the contributor? What would be the potential effects in other regulatory contexts if the Commission were to interpret the term ''user'' in a new way here?

55. We seek comment on what it means for the user to ''specify'' the ''points'' of transmission. Many communications services today allow the user to specify the points of transmission—for example, telephone and text messaging services generally allow a user to reach any other user on the PSTN, and broadband Internet access services generally allow users to access any location on the Internet. Certain services, however, arguably do not allow the ''user'' to specify the endpoints of the communication. To return to the e-books example above, suppose that the free wireless connectivity on the reading device can *only* be used to communicate between the device and Bookseller A's server, and not to reach any other destination on the PSTN or the Internet. In that case, is Ms. Smith, Bookseller A's customer, ''specifying'' the ''points'' of the transmission, or is Bookseller A?

56. We also seek comment on how to interpret the statutory requirement in the definition of ''telecommunications'' that the information transmitted must also be ''of the user's choosing.'' How should we interpret this phrase? For example, suppose a doctor provides a remote monitoring device to a patient that can send information back to the doctor's office. The monitoring device is pre-programmed to transmit only certain types of relevant medical data. Assuming that the other statutory components of ''telecommunications'' are present, is this an instance where the patient should be deemed the ''user'' that is transmitting information ''of his or her choosing,'' or would the fact that only information specified by the doctor or manufacturer that provides the device to the patient is transmitted mean that this communication does not meet the statutory definition of ''telecommunications''?

57. We also seek comment on whether, under a rule such as the one described in this section, the Commission would have to interpret the statutory requirement that the transmission must be ''without change in the form or content of the information as sent and received.'' Although information services often include a component that ''processes'' information in some way, the Commission has in the past recognized that an information service can also include a separate ''telecommunications'' component. Furthermore, the Commission has previously found that while all information services require the transmission of information between customers and ''computers or other processors,'' the form or content of the information is not altered during these transmissions, and such transmissions constitute ''telecommunications.'' Would we be required to revisit any aspect of these interpretations in light of changing technology and marketplace developments?

58. *Impact on the Contribution Base.* We seek comment on the number of additional contributors and impact on the contribution base if we were to adopt the general definitional approach discussed in this section, and whether those figures are likely to grow or shrink in the future. How would the answer to this question differ if we were to assess based on revenues, connections, numbers or some other alternative? For each contribution methodology scenario, what services and providers would contribute under such a rule that do not contribute today? To what extent are they contributing today? What other services, not already discussed above, might be included if we were to adopt the general definitional approach discussed in this section? How would the answer to these questions differ under the definitional approach discussed in this section, as opposed to the service-by-service approach discussed in the preceding section?

59. Finally, to the extent not already covered by the questions above, we request clear and specific comments on the Commission's legal authority and the type and magnitude of likely benefits and costs of each of these variants of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and an identification of all underlying assumptions.

B. How Contributions Should Be Assessed

60. We seek comment on how to simplify our contributions system, consistent with the Act and our proposed goals for reform. Over the last decade, the Commission has sought comment on a number of proposals for alternative methodologies to the current revenues-based system, including methodologies based on connections, numbers, and various hybrid solutions. The record is mixed on whether we should make modifications to our existing revenues-based system, or move to an alternative system such as connections or numbers. Here, we seek comment on reforming the current revenues-based system as well as ask parties to update the record on these alternative methodologies. We seek comment on how each option would further our proposed goals and ask about potential implementation issues that are associated with specific methodologies. We ask commenters to provide data to quantify how potential rule changes would impact the Fund and reduce compliance costs and burdens.

61. We request specific comments on the type and magnitude of likely benefits and costs of each of the possible rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how any data were calculated and an identification of all underlying assumptions.

1. Reforming the Current Revenues-Based System

62. We seek comment on whether we should retain the existing revenues-based system, and if so, how we can reform the current system to provide greater clarity to contributors, thereby promoting efficiency, fairness, and sustainability. Specifically, we seek comment on the pros and cons of retaining a revenues-based system. We ask parties claiming significant costs or benefits of a revenues-based system to provide supporting analysis and facts for such assertions, including an explanation of how they were calculated and all underlying assumptions.

63. What are the benefits or disadvantages of retaining a revenues-based system for a transitional or indefinite period? Are there market distortions caused by the existing revenues-based system? We solicit comment on whether the modifications discussed below would sufficiently address problems with the current revenues system. If we adopt any of the potential reforms discussed in this section to modify the revenues system, would such a system better serve our proposed reform goals than a connections-based, numbers-based, or other alternative contribution system? Would any of the potential reforms suggested in this section also make sense for a connections-based, numbers-based, or other alternative contribution system?

64. To the extent that we retain the current system, we seek comment on rules to simplify how revenues are apportioned for assessment, including the allocation of telecommunications service revenues between the intrastate and interstate jurisdictions, and the reporting of assessable revenues when a customer purchases a bundle of services only some of which are assessable. We also seek comment on how to assess revenues from information services and services that have not been classified as information or telecommunications services. Such adjustments could address some shortcomings in the current system that stakeholders have raised and could reduce administrative burdens on providers and USAC. We also seek comment on alternative approaches to provide greater clarity regarding the respective obligations of wholesalers and their customers, which has been subject to much dispute. We seek comment on adopting a value-added revenues system that would require contributions from each provider in the value chain, or, in the alternative, substantially revising the reseller certification process. Adopting a value-added revenues system or revising the certification process could eliminate the complications and loopholes associated with the current carrier's carrier reporting requirements. In addition, we seek comment on measures to clarify our prepaid calling card reporting requirements to ensure that competitors are contributing in a consistent manner. Finally, we seek comment on eliminating the international-only and the limited international revenues exemptions and on modifying the *de minimis* exemption to reduce compliance burdens.

a. Apportioning Revenues From Bundled Services

65. We seek comment on modifying our bundled offering apportionment rules to adopt more specific standards for determining what apportionment methods are deemed reasonable for allocating revenues from bundled offerings, or to eliminate carrier discretion in determining how to apportion revenues from bundled offerings. We ask whether doing so will further our proposed goals of making the contributions system more efficient and fair, minimizing compliance burdens, and reducing competitive distortions in the marketplace.

66. We are concerned that the lack of bright-line rules may encourage providers to minimize their allocation of revenues in a bundle to assessable services to reduce their contribution obligations in order to gain a competitive edge. A number of commenters have suggested, for instance, that this is a concern in the enterprise market, where there is fierce competition to win contracts from large corporate clients. We seek data from commenters regarding what are common industry practices regarding the allocation of revenues from bundled offerings. To what extent do contributors rely on market studies of stand-alone services offered by other providers? To what extent do contributors allocate revenues based on the allocated cost of the underlying individual services? To what extent do contributors allocate revenues based on revenue reporting requirements imposed by other regulatory jurisdictions, such as cable franchising authorities or state sales tax authorities?

67. We seek comment on adopting a revised apportionment rule that would codify a modified version of the two safe harbors provided under the *CPE Bundling Order,* 66 FR 19398, April 16, 2001, for apportioning revenues from bundled service offerings and eliminate providers' discretion on how to apportion revenues derived from bundled services. Specifically, we seek comment on the following rule for USF contributions purposes: *If an entity bundles non-assessable services or products (such as customer-premises equipment) with one or more assessable services, it must either treat all revenues for that bundled offering as assessable telecommunications revenues or allocate revenues associated with the bundle consistent with the price it charges for stand-alone offerings of equivalent services or products (with any discounts from bundling assumed to be discounts in non-assessable revenues).*

68. We seek comment on whether this rule would simplify the process of apportioning bundled revenues in a way that is transparent, enforceable, and easily administrable. How would such a rule be enforceable if the provider does not offer stand-alone equivalent services? Would we need a separate rule to address such circumstances? If so, how should that rule be structured? Would the benefits of limiting the method by which providers determine

assessable revenues for bundled services outweigh any potential benefits of allowing providers to present individualized showing, as permitted under the current rule? We seek comment and examples of instances where some providers of bundled services may be allocating assessable revenues differently than their competitors, creating a competitive disadvantage. Would eliminating the open-ended apportionment option in favor of the rule above minimize competitive disparities? Would the rule change incentives to offer (or not offer) assessable services on an unbundled basis?

69. We seek comment on the technical aspects of such a rule. For example, if we were to adopt such a rule, how much discretion should carriers have in determining what constitutes a ''stand-alone offering of equivalent service''? How could we prevent contributors from gaming a stand-alone option to minimize their assessable revenues? Should there be a requirement, for instance, that such a stand-alone offering be generally available and actually subscribed to by a minimum number of end users? If so, how and how many end users? Are there any alternative ways to ensure that contributors are not creating a sham stand-alone offering to minimize contribution obligations?

70. We also seek comment on whether such a rule would create competitive disparities between providers that offer stand-alone offerings of assessable services, and those that only sell bundled services in the marketplace. Should we require carriers that do not offer a stand-alone service themselves to rely on a market analysis of services offered by other carriers in the marketplace or a tariffed rate of another provider? If so, should we require such carriers to submit any such market analyses used for imputation purposes or third party tariffed rate to the Commission and to USAC? Should we require that the stand-alone offering price be objectively verifiable by the Commission or USAC, such as by reference to a public Web site or tariffed offering? What measures would need to be in place for USAC to be able to verify stand-alone pricing for business services, which are often individually negotiated for individual customers? Is there any reason to implement such a rule only for certain types of bundled offerings and not others, or certain classes of customers and not others? What is the least burdensome mechanism to ensure allocations are objectively verifiable?

71. We seek comment on how the rule would impact the overall contributions base, as well as the individual burden on consumers. What would be the impact of the rule on providers serving consumers with lower telecommunications expenditures (such as a voice only subscriber with limited long distance calling) compared to providers serving consumers with higher expenditures (such as a triple-play subscriber)? How would such a rule affect consumers with lower telecommunications expenditures compared to consumers with higher expenditures? What would be the impact of such a rule on mobile providers, who increasingly are deriving revenues from bundled voice-data packages, and their consumers?

72. We also seek comment on alternative rule language as well as alternative means of determining contribution obligations for bundled service offerings. Parties that submit alternative proposals should explain how such proposals further our proposed goals of reform and are consistent with our legal authority. We ask commenters to quantify, where possible, how their proposed rule would impact the contribution base and total assessable revenues.

73. For each of these alternatives, we seek comment on how the approach would impact the overall contribution base, as well as the individual burden on contributors and consumers. We also seek comment on what steps would need to be taken to implement the proposals above or alternative proposals for apportioning revenues from bundled service offerings for USF contribution purposes. How much time would parties need to transition to a new method of apportioning revenues from bundled offerings?

74. As discussed above, the Commission has the authority to assess all providers of interstate telecommunications, if the public interest warrants. Would a contribution methodology that assesses the full retail revenues of bundled services that contain ''telecommunications,'' as that term is defined in the Act, without safe harbors or the ability to present individualized showings, conform to the statutory requirements? Given the growth in bundled service offerings over the last decade, would adopting such a bright-line rule make the contribution base more stable and thereby serve the public interest? Would it further the principle of ''equitable and non-discriminatory'' contributions by reducing potential competitive distortions among providers and service offerings that apportion revenues using different methodologies? Would a simplified approach that assesses the total bill for bundled services promote administrative efficiency and reduce compliance and enforcement expenditures? Would it be appropriate to adopt such an approach even if the Commission chose not to make every component of a bundled service individually assessable, or would that create market distortions and discourage bundled offerings?

b. Contributions for Services With an Interstate Telecommunications Component

75. We seek comment on what revenues should be assessed to the extent we choose to exercise our permissive authority over services that provide interstate telecommunications. For example, to the extent enterprise communications services that are implemented with MPLS protocols are information services that provide interstate telecommunications, we seek comment on whether we could and should assess the full retail revenues of such enterprise communications services, or instead should adopt a bright-line that would assess only a fraction or percentage of the retail revenues.

76. Would it be consistent with our statutory authority under section 254(d) to require contributions on the full retail revenues of an information service that provides interstate telecommunications? Is there a potential for competitive disparity, to the extent a non-facilities-based provider of such services is assessed on its retail revenues, and also may bear indirectly the cost of a universal service contribution on underlying transmission that it purchases from a wholesale provider? To what extent should the retail revenues derived from information services have some nexus with the underlying transmission component, in order for the full retail revenues to be assessed? What are the advantages and disadvantages of assessing retail information service revenues, if we were to exercise our permissive authority?

77. Alternatively, should we assess only the telecommunications (*i.e.,* the transmission) component, and if so, how would we determine what portion of the integrated service revenues should be associated with the transmission component? For example, the MPLS Industry Group proposes that revenues associated with the access transmission components of all MPLS-enabled services be imputed on a uniform basis and made subject to USF contributions obligations through Commission-established ''MPLS

Assessable Revenue Component'' proxies. In other cases, the underlying transmission is separately offered on a Title II basis, which could provide a basis for assessing only the revenues associated with the transmission component. We seek comment on the MPLS Industry Group proposal. Is such a proposal workable for other similar services?

78. We seek comment on the following rule: *If an entity offers an assessable information service with an interstate telecommunications component, it must treat all revenues for that information service as assessable revenues, unless it offers the transmission underlying the information service separately on a stand-alone basis. If it offers the transmission on a stand-alone basis, it may treat as assessable revenues an amount consistent with the price it charges for stand-alone offerings of equivalent transmission.*

79. We seek comment on whether this rule would simplify the process of determining assessable revenues for information services in a way that is transparent, enforceable, and easily administrable. How would such a rule be enforceable if the provider did not offer the underlying transmission on a stand-alone basis? In such circumstances, should we craft a rule that looks at the general retail price of such transmission services when offered on a stand-alone basis by other providers? Would the proposed rule change incentives to offer (or not offer) telecommunications transmission on an unbundled basis? Would such a rule create competitive disparities between providers that choose to offer transmission on a stand-alone basis (such as small rate-of-return carriers that offer broadband Internet access) and providers that do not offer transmission separately (such as cable operators in the same geographic area as those rate-of-return carriers)?

80. In the alternative, should we craft a rule, or a safe harbor, that provides for assessment of a certain percentage of the retail revenues of information services with a telecommunications (transmission) component? Would it be legally permissible for the Commission to assess a set percentage of the retail revenues, even when such percentage might exceed the allocated revenues associated with the underlying transmission in that information service? Would a set percentage be easier to administer, reduce compliance costs, and otherwise be in the public interest? Would it create competitive distortions? Should the percentage vary depending on the type of information service at issue? Is some other formula for determining the assessable percentage of retail revenues of an information service appropriate?

81. For each of these alternatives, we seek comment on how the approach would impact the overall contributions base, as well as the individual burden on contributors and consumers. We also seek comment on what steps would need to be taken to implement the proposals above or alternative proposals for apportioning revenues from information services for USF contribution purposes. How much time would parties need to transition to a new method of apportioning revenues from information services with an interstate telecommunications component?

c. Allocating Revenues Between Inter- and Intrastate Jurisdiction

82. We seek comment on modifying or eliminating the requirement that carriers are assessed based on interstate and international revenues. While that requirement may have made sense when the Commission initially implemented the Act, the marketplace has changed dramatically since 1996 and will evolve with the continued deployment of IP-based networks.

83. As a general matter, we seek comment on whether the Act compels us to only assess a portion of revenues associated with services that operate interstate, intrastate, and internationally. We also seek comment on whether as a policy matter we should require that revenues be allocated based on the jurisdiction that regulates the associated service. Does this construct make sense in an environment where many contributors are not rate regulated, and many of the services they offer are only lightly regulated?

84. One approach would be to adopt a rule that requires all providers that are subject to contributions to report and contribute on all of the revenues derived from assessable services rather than require providers to allocate revenues between the interstate and intrastate jurisdictions. Since many services offered today are not priced and sold separately as intrastate or interstate service, any designated allocation between jurisdictions may be arbitrary to some extent. In the *TOPUC* decision, the court found that the Commission did not have jurisdiction to assess federal universal service contribution on intrastate revenues. Given the changes in the marketplace, would the *TOPUC* decision prohibit assessing a federal universal service fee on the entire service?

85. The State Members of the Joint Board argue that the regulatory jurisdiction over a service should not determine whether that service contributes to universal service. They note that the states may constitutionally impose sales taxes on both interstate and intrastate telecommunications, and they suggest that the U.S. Constitution does not prohibit there being both a federal universal service surcharge and a state universal service surcharge on all services delivered over the public communications network. They acknowledge that the 1999 *TOPUC* decision limited the Commission from imposing universal service surcharges on intrastate services, but they contend that *TOPUC* was wrongly decided. We seek comment on the State Members' analysis and ask commenters to address whether it would be consistent with section 254(d) for the Commission to require contributions on all revenues derived from services delivered over a public network.

86. Would a rule that assesses all revenues from services that operate interstate, intrastate, and internationally without allocation for intrastate operations advance our proposed goals for reform? How would such a rule impact the contribution base, today and in the future? We note that the sum of interstate, international, and intrastate revenues for all filers was $210 billion in 2010, while the contribution base (the total of reported assessable revenues) for 2010 was $67 billion. If such a rule had been in place in 2010, *i.e.,* a rule that assesses all interstate, intrastate, and international revenues, the contribution factor would have been roughly four percent, instead of 14 percent on an annualized basis. Would such a system be significantly simpler to administer, reducing the costs of complying with our contribution rules? How would such a system affect states? How would such an approach affect the allocation of the contribution burden, especially between residential consumers and enterprise consumers? For example, would residential consumers end up paying (in USF pass through charges) a substantially higher portion of the USF burden than they do today, compared to enterprise customers? If so, are there ways to offset or limit this effect? Commenters are encouraged to provide additional data and analysis regarding the impact of such a rule change.

87. Another alternative would be to adopt bright-line rules for how companies should allocate revenues between jurisdictions for broad categories of services. If we were to adopt such rules, how narrowly or broadly should we define the relevant

services? As shown in Chart 5 below, the percentage of end user revenues that are reported as interstate/international have remained relatively stable for the major subcategories of revenue that have been reported on FCC Form 499 between 2004 and 2011. Should we adopt a separate allocator for each major category of service presently reported on Form 499 (fixed local services, mobile services, toll services), or should we follow a simpler approach, for instance, with just two allocation rules: one for voice and one for data services? For instance, we could adopt a standard allocator for all voice revenues, regardless of technology (fixed or mobile, traditional telephony or interconnected VoIP). Under such an approach, we could specify that voice revenues should be allocated according to a specified ratio, such as 20 percent interstate and 80 percent intrastate. Should the interstate allocation be higher or lower? Is there any policy justification for setting a different percentage for voice based on the type of carrier or technology used?

88. In other contexts, the Commission has recognized that Internet access services are jurisdictionally interstate because end users access Web sites across state lines. We seek comment whether a similar finding should be made for USF contribution purposes. Specifically, if we use our permissive authority to expand or clarify USF contribution requirements to include enterprise communications services, text messaging services, and broadband Internet access services (both fixed and mobile), should we find that for USF contribution purposes, revenues from such services should be reported as 100 percent interstate? Alternatively, should we use an allocator lower than 100 percent interstate for contribution purposes, to preserve a revenue base that could be assessed for state universal service funds?

89. What data should be considered when developing that fixed percentage of interstate and intrastate revenues for services? Appendix C presents in more detail the percentage of end user revenues that are reported as interstate/international for each individual subcategory of end user revenue reported on FCC Form 499 for the periods of 2004 through 2011. For 2011, filers reported $73.5B in total revenues for fixed local revenues, with 30 percent allocated to the interstate category and 0.6 percent allocated to the international category. For mobile services, filers reported $106.6 billion in total revenues in 2011, with 22.8 percent allocated to the interstate category and 0.4 percent allocated to the international category. For toll services in 2011, filers reported $34.3 billion in total revenues, with 50.3 percent allocated to the interstate category, and 21.4 percent allocated to the international category. We note that there is significant variation in some of the individual subcategories of revenues as currently reported on FCC Form 499. How should our decision be informed by the interstate percentages reported for individual subcategories of service as reported on the current Form 499, such as fixed local exchange (line 404) and mobile services monthly and activation charges (line 409)?

90. To what extent should we take into account ratios reported by wireless carriers and interconnected VoIP providers in their traffic studies? If we were to adopt a ratio applicable to the broad category of ''mobile services,'' for instance, should we base the percentage for mobile services, on the average (23 percent) or median (19 percent) ratio that carriers have reported in their most recent traffic studies? Commenters that support a different percentage should explain why adoption of that alternative is preferable.

91. If we were to adopt such a rule specifying that a set percentage of revenues should be reported as interstate for a category of service, should carriers still be permitted to make a particularized showing that a higher percentage of their traffic is intrastate? Should the Commission adopt a mechanism to periodically update the percentage and, if so, what would be the basis for updating the fixed percentage factor? How would such a rule impact the contribution base, today and in the future? Commenters are encouraged to provide additional data and analysis regarding the impact of such a rule change.

92. Would adopting a fixed allocation method for categories of services, or an across the board fixed allocation method, further our proposed goals for contribution reform? Using a single allocation factor for contribution purposes could potentially minimize competitive distortions among providers offering similar services. Would a single allocation factor help stabilize the contribution base by eliminating incentives for providers to underreport their interstate telecommunications revenues? Would a single allocation factor lessen providers' compliance burdens by eliminating the need to perform traffic studies or to maintain and update the methodology used to establish their good-faith estimates? Would using a single allocation factor potentially provide greater predictability?

93. We seek comment on whether, if we were to adopt a rule imposing a fixed interstate allocator, we would be legally required to adopt a procedure by which a provider could ''opt-out'' of using the single allocation factor and instead make an individualized showing. We seek comment on whether allowing any telecommunications provider to opt-out would negate the administrative simplicity of adopting a single allocator for purposes of universal service contributions. To the extent that any commenter believes there should be a mechanism to ''opt-out'' of the fixed allocation factor, it should explain what showing should be required to opt out, and what steps the Commission should take to minimize competitive distortions that may arise if alternative allocations are used for certain types of providers or for certain types of traffic. For example, should a provider that opts out of the fixed allocation factor be required to allocate revenues on a customer-by-customer basis, given that each customer actually uses the purchased telecommunications differently?

94. We also seek to develop a factual record on the regulatory compliance costs stemming from the current requirement to allocate revenue between the intrastate and interstate jurisdictions. We seek comment and data submissions regarding the costs imposed on companies today to separate their revenues in this fashion, and the costs associated with performing a traffic study on an annual basis. We encourage companies to provide estimates not only of the costs associated with their legal and regulatory personnel, but also to include any other costs that compliance with such requirements may pose on other personnel, including accounting, billing, sales, network, IT, and marketing staff, and any costs associated with hiring outside resources, such as attorneys or consultants, to assist in implementing such requirements or responding to any audits or investigations relating to this aspect of our contribution rules.

95. To the extent commenters have concerns about any of these proposals; they should present alternative methods for simplifying the allocation of revenues between the interstate and intrastate jurisdictions and explain how their proposals would meet the proposed contribution reform goals set forth in this Notice. If we do not adopt a fixed factor or factors to allocate telecommunications revenues, what modifications should we consider making to the current rules?

96. If we continue to allow use of traffic studies to estimate the allocation of interstate revenues, should we codify specific requirements or provide greater detail in the Form 499 instructions for how traffic is categorized in traffic studies to ensure that reporting entities are conducting the studies in a competitively neutral manner? We seek comment on current practices for classifying traffic for traffic studies. We have some concerns that contributors may be using different methodologies in conducting traffic studies, given the broad variation in reported ratios. It is surprising, for instance, that nine wireless providers report no interstate or international revenues at all. Similarly, the fact that 47 VoIP filers report no interstate/international revenues, while some others report ratios relatively close (but slightly under) the current 64.9 percent safe harbor, also suggests that VoIP providers may be classifying their traffic in significantly different ways, and there may be a need to provide more standardized guidance regarding how to perform a traffic study. We seek comment on this analysis.

97. We seek comment on what steps would need to be taken to implement the approaches above or alternative approaches to simplify the allocation of interstate and intrastate revenues for federal USF contribution purposes. We also seek comment on how much time, if any, parties would need to transition to any new allocation method.

d. Contribution Obligations of Wholesalers and Their Customers

98. *Value-Added Approach to Assessing Contributions.* We seek comment on whether we should modify the existing universal service contribution methodology to assess ''value-added'' revenues rather than ''end-user'' revenues. Under this value-added approach, each telecommunications provider in a service value chain (including both wholesalers and resellers) would contribute based on the value the provider adds to the service. Thus, in a revenue-based system, a wholesaler would contribute on its wholesale revenues, and a reseller of those services would contribute based on its retail mark-up.

99. Under this value-added revenues approach each provider in a distribution or value chain would contribute based on the provider's total interstate and international revenues, less a credit for any telecommunications services or telecommunications purchased from other contributors in the distribution or value chain. Contributors would not, therefore, need to distinguish between revenues from end users and revenues from other telecommunications providers.

100. We seek comment on the following potential rule change, which could implement a value-added revenues system: *A contributor must contribute based on its projected assessable revenue less a credit for telecommunications services or telecommunications purchased from other contributors. Contributors shall report such revenues on the FCC Form 499–A and 499–Q Telecommunications Reporting Worksheets or such other forms or filings as the Commission may prescribe from time to time. Projected revenue information shall be subject to an annual true up, as prescribed from time to time by the Commission in its Telecommunications Reporting Worksheet instructions.*

101. We ask whether the proposed value-added revenues approach would meet the proposed goals of improving administrative efficiency, while ensuring sustainability of the Fund. For example, how would a value-added system further our proposed goals of simplifying administration and oversight of the contribution system? Would a value-added system reduce incentives to structure transactions to avoid contribution obligations? Would adoption of a value-added system have unintended consequences that undermine our proposed goals in reforming the system? What records should contributors be required to retain to demonstrate compliance with a value-added system? For example, if we adopted the rule proposed above, should contributors be required to retain (and/or report) back-up for the ''credit for telecommunications services or telecommunications purchased from other contributors''?

102. As an alternative to reporting on the revenues earned minus any amounts paid for telecommunications service inputs, should we implement a value-added methodology in which carriers instead subtract from their final contribution liability any pass-through charges paid to other contributors? If so, should we require or permit telecommunications providers to pass through an explicit universal service line-item charge to customers that are also telecommunications providers? Would a pass-through charge in these limited circumstances enable telecommunications providers and USAC to verify the universal service charges paid by one contributor to another for purposes of calculating the credit the contributor should receive against its own contribution obligation? Would mandated pass-through charges benefit competition by eliminating the ability of wholesale providers to distinguish service offerings based on whether or how they pass through universal service charges to their reseller customers? Would allowing providers to retain discretion over whether to recover their contributions implicitly or via an explicit line-item charge further our proposed goals of ensuring competitive neutrality and simplicity in the USF contribution system? Under a value-added assessment system, how should we treat transactions between wholesale providers and non-carriers (*e.g.,* retailers or distributors of prepaid calling cards), or transactions between wholesale providers and entities that are currently exempt from directly contributing to the Fund (*e.g.,* non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers)?

103. If we adopt a value-added system based on credits for pass through charges paid to other providers, we seek comment on whether we should scale or otherwise limit the credit a telecommunications provider receives to account for the fact that this system may exclude some telecommunications revenues from assessment. We also seek comment on the implementation of a value-added system. What would be an appropriate time frame for implementing such a rule? For example, to what extent would the existence of long-term contracts warrant delaying implementation of a value-added revenues system? If we delay implementation, what would be a reasonable period of time to transition to this system?

104. We request clear and specific comments on the type and magnitude of likely benefits and costs of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how data were calculated and identification all underlying assumptions.

105. *Value-Added Approach for Alternative Contribution Methodologies.* The value-added revenues system discussed above assumes retaining a revenues-based contribution system. We seek comment below on moving from a revenues-based contribution system to a system based on assessing connections or numbers. Commenters should indicate whether a value-added system could and should be developed for a connections-based or numbers-based contribution system. If value-added is needed or advisable for such other contribution systems, commenters

should explain the basis for such analysis, and should indicate how a value-added system would work in such instances.

106. We note that one of the considerations in crafting the current revenue-based system focused on end users was to avoid ''double counting'' revenue. We ask commenters whether a connections or numbers-based system may also raise concerns of double counting, and if so, how a value-added proposal could be crafted to address this issue. More generally, we seek comment on whether avoiding double counting remains a significant policy concern, and if it should inform the structure of a contributions methodology system.

107. In particular, we seek comment here on whether a value-added system similar in concept to the value-added revenues proposal set forth above for a revenues-based system may be desirable for connections, and if so, how such a system would operate. If we were to adopt a service-based definition of connections, there could be situations in which a wholesaler sells a ''connection'' to a reseller who adds value by separately selling more than one service over that connection. For instance, to the extent Carrier A sells a connection to Carrier B, and then Carrier B sells two connections to the retail customer, would it simplify administration of a connections-based system if both Carrier A and B are assessed based on the connections provided to their respective customers, with Carrier B receiving a credit for the number of connections it has purchased from a wholesale provider so that, in this example, Carrier A and B would each be assessed for one connection?

108. We also seek comment on how one might adopt a value-added approach for a numbers-based methodology. Would a value-added approach work in which each provider of interstate telecommunications in a service value chain (including both wholesalers providers and their customers) that provides a number to a customer would contribute on that number, with a credit provided to the extent a carrier obtains lines with numbers from another provider? Alternatively, would it make sense to adopt a system in which a wholesaler could contribute on its wholesale numbers at a lesser adjusted rate, and its customer could contribute based on a higher per-unit rate for numbers associated with services provided to retail customers, with an adjustment made for any pass-through charges paid to the wholesale provider?

109. *Reasonable Expectation Standard.* We seek comment on potential bright line rules that we could adopt that would provide greater clarity to contributors as to what steps they must take to properly report their assessable revenues and lessen the need to engage in such fact-intensive inquiries, if we maintain a revenue-based contribution methodology.

110. We seek comment and data submissions regarding the costs imposed on companies today to separate their wholesale from their retail revenues, and the costs associated with complying with the requirement that they demonstrate a reasonable expectation that their customers are contributing to USF. We encourage companies to provide estimates not only of the costs associated with their legal and regulatory personnel, but also to include any other costs that compliance with such requirements may pose on other personnel, including accounting, billing, sales, IT, and marketing staff, and any costs associated with hiring outside resources, such as attorneys or consultants, to assist in implementing such requirements or responding to any audits or investigations relating to this aspect of our contribution rules.

111. We seek comment on whether we should adopt a rule mandating greater specificity in contributor certifications regarding the services on which the certifying entity is contributing, so that wholesalers are in a better position to determine which of their revenues should be classified as carrier's carrier revenues. Many contributors may obtain such certifications from their customers only on an entity-wide basis, rather than on a service-specific basis, because the model certification language provided in the instructions beginning in 2007 does not specify service-specific certifications.

112. We seek comment on adopting a rule that would establish the following language for customer certifications:

I certify under penalty of perjury that the company is purchasing service which is incorporated into the company's offerings. I also certify under penalty of perjury that either my company contributes directly to the federal universal support mechanisms for those offerings that incorporate this wholesale service, or that each entity to which the company, in turn, sells those offerings has provided the company with a certificate in the form specified by Commission rules.

OR I certify under penalty of perjury that the company is purchasing service for which is incorporated into the company's offerings. I also certify under penalty of perjury that: (check one)

The company contributes directly to the federal universal service support mechanisms for those service offerings that incorporate the wholesale service, or if the company resells the service to another contributor, that the company has received a certification from each customer in a form specified by Commission rules that the customer will contribute directly based on revenues from each such service.

The company contributes on [number] percent of the revenues for services that incorporate the wholesale service, or has received a certification from its customer stating that the customer will contribute directly based on revenues from the service. On the remaining [number] percent of the revenues of the service that incorporates the wholesale service, the company does not directly contribute, and it does not sell that service to another contributor.

I also certify under penalty of perjury that the company will notify [name of wholesale provider] within [30 or 60 days] if the information provided in this certification changes.

113. *Specificity as to Incorporation of Wholesale Services into a Finished Service.* It appears that under our current requirements, certain revenues may be escaping assessment altogether, in situations where a wholesaler does not contribute on revenues derived from customers that it believes to be contributing when in fact the customer is not contributing on those revenues. We seek comment on the magnitude and prevalence of this problem. In these and other analogous situations, should there be an affirmative obligation on the part of the entity that purchases the wholesale telecommunications to specify in its certification the extent to which the wholesale input is incorporated into assessable services versus non-assessable services? For instance, should we adopt the following rule: *To the extent a company purchases services that are incorporated into its own offerings, with some of the offerings subject to universal service contributions and some of the offerings not subject to universal service contributions, the purchaser has an affirmative obligation to provide information to its wholesale provider sufficient for the wholesaler to allocate the revenues associated with its service as carrier's carrier revenue or end-user revenue.*

114. What burdens would such a rule impose on entities that purchase wholesale telecommunications to incorporate into their finished offerings, and what measures could be implemented to minimize such burdens? If we were to adopt such a rule, what metric should the purchasing entity use in developing the relevant allocations? For instance, should it base the percentage on the number of circuits, the revenues associated with individual circuits (to the extent that can be determined), the average usage of a circuit, or something else?

115. We seek comment on whether to adopt a rule imposing an affirmative obligation on entities purchasing wholesale telecommunications that sign certifications to notify their wholesale carrier within a specified period of time, such as 30 or 60 days, if their contribution status changes over the course of the year. For instance, we seek comment on the following rule: *Providers who provide contributor certifications to their wholesale carriers must notify their wholesale carrier within [30 or 60] days if the contribution status provided in the certifications changes.*

116. Today, there may be situations where an entity certifies in good faith at the beginning of the year that it is a contributor with respect to the services provided to its retail customers, but subsequently it ceases to be a contributor. This could occur, for instance, if the entity purchases a special access circuit from a wholesaler, and initially expects to provide special access to a retail customer, but ultimately uses that circuit to provide broadband Internet access service, which is not assessable under our current rules. Or an entity purchasing wholesale telecommunications may expect to contribute, but ultimately it turns out to be a de minimis contributor due to lower than expected revenues. In both situations, the wholesaler would not contribute on the services (because it has a contributor certificate from its customer), but its customer ultimately does not contribute, resulting in revenues not being subject to contributions at any point in the value chain. Commenters should address the time frame in which such notification should occur, and what specific procedures should be followed. To the extent that parties support elimination of certifications in favor of an alternative system or a bright line, we ask them to provide specific details on how any such alternatives would be implemented, administered, and enforced.

117. Another alternative on which we seek comment is whether we should assess wholesalers at their point of sale, but not their customers, so long as the wholesaler certifies that the contribution has been or will be paid. Would such an approach be easier to administer? Are there disadvantages to such an approach? Commenters should indicate, to the extent possible, the reduction to the contribution base if we were to adopt such an approach and how such an approach would impact contribution burdens.

118. *Improved Certification Requirements Compared to Value Added Revenues System.* Commenters are encouraged to compare and comment on both the improved certification system and the value-added system discussed immediately above in this Notice. Is there a particular advantage over one approach over the other? Do aspects of both approaches need to be adopted? If we adopt a value-added revenues system, should we adopt modifications to our contributor certification rules on an interim or transitional basis while we implement the value-added approach?

119. *Improved Certification Requirements for Alternative Contribution Methodologies.* We also seek comment on moving from a revenues-based contribution system to a system based on assessing connections or numbers. Commenters should indicate whether similar contributor certification requirements as discussed above should be developed for a connections-based or numbers-based contribution system. If improved certification requirements are needed or advisable for such other contribution systems, commenters should explain the basis for such analysis, and should indicate how the contributor certifications would work in such instances.

120. We ask commenters whether a connections or numbers-based system may also raise concerns of double counting, and if so, how a contributor certification could be crafted to address this issue. More generally, we seek comment on whether avoiding double counting remains a significant policy concern, and if it should inform the structure of a contributions methodology system.

In particular, we seek comment here on whether improved contributor certifications similar in concept to the proposals discussed above might be desirable for connections, and if so, how such a system would operate. If we were to adopt a service-based definition of connections, there could be situations in which a wholesaler sells a ''connection'' to a customer who adds value by separately selling more than one service over that connection. We also seek comment on how one might adopt contributor certifications for a numbers-based system.

e. Contribution Obligations of Wholesalers and Their Customers

121. *Reporting Prepaid Calling Card Revenues.* Our rules require prepaid calling card providers to contribute to the Fund based on their end-user revenues. We seek comment on modifying existing rules to provide clarity to the industry in response to requests from USAC and record evidence suggesting different prepaid calling card providers may be interpreting our rules in different ways, which may result in an unlevel playing field for competitors of these services. We seek comment on adopting a rule to require prepaid calling card providers to report and contribute on all end-user revenues, and who should be deemed the end user for purposes of such a rule. We ask whether prepaid calling card providers should only report amounts paid by the entity to which the provider directly sells the prepaid service. Alternatively, we seek comment on adopting a rule to require prepaid calling card providers to contribute based on the amounts paid by end users for prepaid cards, whether the prepaid calling card is purchased by the end user directly from the prepaid calling card provider or from a marketing agent, distributor, or retailer. We also ask about the application of the value-added contribution paradigm, discussed above, to assessment of prepaid calling card service. In addition, we seek comment on measures to standardize how providers report prepaid calling card revenues, eliminating incentives or opportunities for providers to avoid their USF contribution obligations. We also solicit comment on whether adopting these reforms would further our proposed goals for reform and the potential impact on the Fund if we were to adopt the measures described below.

122. *Defined Terms.* We first seek comment on modifying the definition of prepaid calling cards as explained below. The terms ''prepaid calling cards,'' and ''prepaid calling card providers'' are defined in § 64.5000 of our rules, as adopted by the Commission in the *Prepaid Calling Card Services Order,* 71 FR 43667, August 2, 2006. The definition of a prepaid calling card is fairly expansive, encompassing not just physical cards that require the input of a personal identification number (PIN) but also any ''device'' that provides end users with the same or similar functionality. Although we propose retaining these definitions, we seek comment on whether we should add the phrase ''or service'' to the definition to make clear that our prepaid calling card rules will encompass new ways to market prepaid telecommunications services that do not involve using a PIN or a device. Such a modification could read as follows (new language underlined): (a) Prepaid calling card. The term ''prepaid calling card'' means a card or similar device or service that allows users to pay in advance for a specified amount of

calling, without regard to additional features, functions, or capabilities available in conjunction with the calling service; (b) Prepaid calling card provider. The term ''prepaid calling card provider'' means any entity that provides telecommunications service to consumers through the use of a prepaid calling card.

123. We also seek comment on whether we should define, for purposes of prepaid calling cards, the term ''prepaid calling card distributor'' as we use it in the context of reporting prepaid calling card revenues. The use of such term would acknowledge that prepaid calling cards are often sold by means of marketing agents, distributors or retailers. We seek comment on the following proposed definition: *Prepaid calling card distributor. A marketing agent, distributor, retailer, or other third party that sells or resells prepaid calling cards on behalf of a prepaid calling card provider.*

f. Reporting Prepaid Calling Card Revenues

124. We also seek comment on alternative methods prepaid calling card providers should use to report revenues from prepaid calling card services. Today, prepaid calling card providers are required to report and contribute on the end-user revenues from the sale of prepaid calling card services. The current version of the Telecommunications Reporting Worksheet instructions calls for reporting of such revenues by the prepaid calling card provider, whether the end user purchases the card from the prepaid calling card service provider or a marketing agent, distributor, or retailer. Some stakeholders contend that this method, which requires providers to report the ''face value'' of a card as assessable revenue—not the amount actually paid by the provider's end-user customer—is unrealistic considering that many cards do not have a face value, and contributing providers often do not know and have no control over the ultimate retail price of a calling card.

125. We first seek comment on limiting the contribution and reporting requirements of prepaid calling card providers to report amounts paid only by the person or firm to whom the provider directly sells the prepaid card. Prepaid calling card providers that sell directly to an end-user customer would, as now, easily identify and report the assessable revenue amount. However, in situations where the provider sells the card to an intermediate distributor or retailer, rather than an end-user customer, under this paradigm we would require the provider to report revenue actually received from the intermediate distributor. This concept presumably would make it simpler for prepaid providers to report accurate revenues because they would recognize actual assessable revenue amounts from the sale to the end-user customer or the intermediate distributor and would not be required to estimate the amount paid by an end-user customer with whom the provider has no retail relationship. This approach could benefit providers and the Fund by permitting providers to report the revenue realized in a more timely fashion. We seek comment on this alternative and ask whether including an intermediate distributor or retailer in the definition of an end user for the purpose of reporting prepaid calling card revenue would create any competitive distortions or create disparities among different types of contributors.

126. In the alternative, we seek comment on codifying in greater detail the approach reflected in the existing Form 499 instructions. We first specifically inquire how prepaid calling card providers should report revenues from sales of prepaid calling card services to marketing agents, distributors, or retailers. The Form 499 instructions state that the revenue to be included in a provider's contribution calculation is the amount actually paid by the end-user customer, not the price paid to the prepaid calling card provider by intermediate marketing agents, distributors, or retailers, even when the distributor pays a different amount than the end user.

127. Should there be symmetry in the way that prepaid calling card service transactions and other transactions are treated for USF contribution purposes? For example, the Form 499 instructions also state that payphone providers should not deduct from reported revenues commission payments to owners of premises where payphones are located. Should we also adopt a rule that payphone providers may deduct from reported revenues discounts provided to intermediate distributors? We seek comment on potential bright lines that would simplify administration of contributions reporting for prepaid calling providers.

128. Adopting a bright-line standard for reporting end-user revenues could reduce or eliminate competitive disparities among providers of similar services. We seek comment generally on adopting a bright-line standard that contributors must use to report prepaid calling card revenues. Would a bright-line standard create an incentive for prepaid calling card providers to establish a process with their marketing agents, distributors, and retailers to specifically identify and report the *actual* prices paid by end users? Should we also consider implementing a safe harbor for providers to estimate end-user revenues when the price paid by the end-user customer cannot readily be determined by the prepaid calling card provider?

129. If we adopt a bright-line standard, we seek comment on what mark-up would be appropriate for prepaid calling card providers to use in determining end-user revenues. Given this wide range of estimated mark-ups, we seek comment on whether a standard mark-up of 50 percent would be a reasonable mid-point between the various estimates that have previously been suggested by commenters. We also seek comment on whether a higher or lower standard mark-up would be more representative of industry practice or would better serve in creating an incentive for providers to work with their marketing agents, distributors and retailers to identify the actual price paid by end-users. Adopting a standard mark-up that falls at the higher end of the scale, for example, may provide a greater incentive for prepaid calling card providers to determine and report the actual prices paid by end users. Parties should provide specific data to support their arguments.

130. To further ensure that all reporting entities are reporting prepaid calling card revenues in a consistent manner under the current system, we seek comment on requiring prepaid calling card providers to report revenues derived from the sale of prepaid calling cards not later than 60 days after the date the cards are sold by the prepaid calling card provider to a prepaid calling card distributor. Adopting a rule that creates an appropriate time limit for recognizing revenue derived from the sale of prepaid calling cards could serve to further reduce competitive distortions that arise from disparate interpretations and application of our rules. We seek comment on this analysis. We also seek comment on whether it is reasonable to expect that most cards are sold within sixty days of the date the provider bills the prepaid calling card distributor for the cards, taking into account a 30-day billing cycle and an additional 30 days for the end user to purchase the card.

131. We seek comment on whether these alternative ideas further our proposed goal of ensuring that contribution assessments are fair. Would such a rule be simple to administer? Are there policy reasons prepaid calling card providers should be allowed to reduce or adjust reported

revenues based on discounts provided to prepaid calling card distributors?

132. We also ask about the relationship between assessment of prepaid calling card providers and the ''value-added'' approach to assessing revenues discussed above. Under this approach, each telecommunications provider in a service value chain (including wholesalers, distributors, and reselling retailers) would contribute based on the value the provider adds to the service. As applied to the prepaid calling card marketplace, any firm that derives revenue from the sale of prepaid calling card services would report and contribute based on that revenue and would be permitted to take a credit based on contributions made by other contributors in the chain. We seek comment generally on this approach and inquire about the potential impact on firms that are not already reporting revenue or contributing to the Fund, such as retailers and other non-contributors. Should we consider an exemption from any reporting and contribution obligations for certain categories of retailers or distributors? If so, what would be the basis for such an exemption? What would be the impact on other contributors in the prepaid card chain, such as the service provider? Should we also consider a more limited exemption such that we require these companies only to report revenue derived from the card in order to ensure the Fund is fully compensated? Finally, we seek comment on what steps would need to be taken to implement any of the ideas discussed above or any alternative proposals to modify the contribution reporting requirements for prepaid calling card revenues. We also seek comment on how much time parties would need to transition to any such new rules.

g. International Telecommunications Providers

133. We seek comment on whether we should eliminate the limited exemption for providers whose revenues are exclusively or predominantly international. We seek comment on modifications to our current rules regarding the contribution obligations of international providers.

134. *Eliminating the ''International Only'' and the ''Limited International Revenues'' Exemptions.* We seek comment on whether the Commission should eliminate the exemption for international-only providers and Limited International Revenues Exemption (LIRE)-qualifying providers, and our legal authority for doing so. In 1997, the Commission interpreted section 254 of the Act, and specifically our authority to assess all ''providers of interstate telecommunications,'' as drawing a three-way distinction between intrastate, interstate, and international telecommunications. We seek comment on whether, in light of the changes in the industry and telecommunications marketplace, section 254's reference to interstate telecommunications in the context of universal service contributions is better viewed as drawing a jurisdictional line between the authority of the states (which have authority over providers of intrastate telecommunications under section 254(f)) and the authority of the Commission (which has authority over providers of interstate telecommunications under section 254(d)). Such a reading of section 254 would parallel the Commission's reading of other sections of that Act that divide responsibility between the state and federal jurisdictions and include international services within the Commission's jurisdiction. Alternatively, we seek comment on whether we could rely on section 254(b)(4)'s principle of ''equitable and nondiscriminatory contributions'' to require international-only and LIRE-qualifying providers to contribute because these providers also benefit from being able to originate or terminate traffic in the United States. We note that the Act distinguishes ''foreign communication'' from both interstate and intrastate. Does that distinction affect the Commission's authority to treat interstate and foreign telecommunications in the same manner?

135. We also seek comment on whether the *TOPUC* decision limits our ability to re-examine the international-only and LIRE exemptions today. The Fifth Circuit in *TOPUC* held that the Commission's previous rule, which had required providers with limited interstate telecommunications revenues to contribute based on both their interstate and international revenues but exempted providers without interstate telecommunications revenues, was not ''equitable and nondiscriminatory.'' The court held that the previous rule ''damage[d] some international carriers [*i.e.,* limited-interstate-revenue providers] more than it harm[ed] others [*i.e.,* no-interstate-revenue providers].'' The court also found the rule inequitable because it required limited-interstate-revenue providers ''to incur a loss to participate in interstate service.'' The court did not, however, make any findings or opine about the Commission's jurisdiction to assess international revenues. Thus the Commission should have significant discretion to revise its rules regarding contributions on international revenues, consistent with the Fifth Circuit decisions, so long as the new rule is equitable and nondiscriminatory. We seek comment on this analysis and our ability to eliminate the LIRE and to assess one hundred percent of a contributor's interstate and international revenues, without a LIRE exemption.

136. Commenters that oppose the elimination of the ''international only'' and the ''limited international revenues'' exemptions should provide specific alternative rules and explain how their proposals will support the proposed goals set forth in this Notice. We ask commenters to provide data to quantify how our proposals or alternatives will impact the Fund and reduce compliance costs and burdens.

137. *Modifying the Limited International Revenues Exemption.* If we were to assess all international telecommunications revenues, as suggested above, should we also eliminate the LIRE? In the alternative, if we maintain an exemption for international-only providers, we seek comment on whether modifying the LIRE and the contribution obligations of LIRE-qualifying contributors may be appropriate.

138. Specifically, if we do not require LIRE-qualifying providers to contribute on *all* of their end-user international telecommunications revenues, we propose to require LIRE-qualifying providers to contribute on at least a portion of those revenues. Moreover, the LIRE-qualifying factor codified in our current rules (12 percent) may no longer provide the ''adequate margin of safety'' it once did for providers that primarily offer international services, given that the contribution factor has remained above 12 percent over the past two years. We therefore seek comment on ways to modify the LIRE-qualifying factor.

139. If we retain the LIRE, we seek comment on whether we should modify the LIRE as follows: If the ratio of an entity's collected interstate end-user telecommunications revenues to its combined collected interstate and international end-user telecommunications revenues is less than that year's LIRE-qualifying factor, that entity's assessable revenues shall be its collected interstate end-user telecommunications revenues plus an equal amount of its collected international end-user telecommunications revenues, net of contributions. (1) The LIRE-qualifying factor for a given year shall be equal to the highest contribution factor

established for any quarter of the previous year plus three percent. (2) For purposes of this subsection, an ''entity'' shall refer to the entity that is subject to the universal service reporting requirements and shall include all of that *entity's affiliated providers of interstate and international telecommunications and telecommunications services.*

140. We seek comment and (if appropriate) examples of how the LIRE results in a competitive advantage for some providers. Providers that qualify for the LIRE compete against non-qualifying providers that must include *all* of their international revenues in calculating their contribution base. LIRE-qualifying providers benefit from being able to originate and terminate both interstate and international calls in the United States. Further, we seek comment on whether the proposed modification of the LIRE would advance the goal of fairness by treating competitive providers in a like manner. Would it advance other of our proposed goals for contribution reform, such as ensuring a stable contribution base? Would requiring LIRE-qualifying providers to contribute based on an amount of their international revenues equal to their interstate revenues be a more equitable approach in today's marketplace? Would the modification proposed above reduce the potential regulatory advantage that LIRE-qualifying providers have over their competitors? What impact would such a modification have on the Fund?

141. We also seek comment on whether we should set the LIRE-qualifying factor based upon a formula rather than fixed percentage. A fixed percentage assumes that the Commission can easily forecast changes in the contribution base as well as changes in the demand for universal service support. Neither of these assumptions has been valid in recent years. The Commission has already had to increase the LIRE-qualifying factor once to respond to the rising contribution factor. Using a formula to establish the LIRE-qualifying factor should eliminate the need for us to periodically rewrite our rules. Moreover, a formula tied to the current contribution factor would also respond to changes in the contribution factor. If, for example, future events bring the contribution factor down, the LIRE-qualifying factor would automatically decrease in future years, which should increase the contribution base. Should we set the LIRE-qualifying factor one year at a time to provide regulatory certainty for contributors? A three percent increase tied to the current or anticipated contribution factor is generally in line with previous increases to the LIRE. Would a three percent increase, for example, over the previous year's highest contribution factor, be sufficient to address unexpected events in the future?

142. We seek comment on what steps would need to be taken to implement the potential modifications outlined above or alternative proposals to modify the contribution requirements for international-only and predominantly international providers. We also seek comment on how much time parties would need to transition to any modified or new reporting requirements.

h. Reforming the De Minimis Exemption

143. We seek comment on streamlining the *de minimis* exemption to ease administrative burdens. In particular, we seek comment on whether we should modify the *de minimis* exemption to base the threshold on a provider's assessable revenues rather than on the amount of its contributions. We also seek comment on how we could potentially reform our rules to minimize the filing requirements for companies that may be subject to the exemption.

144. We seek comment on whether we should modify the Commission's *de minimis* rules in an effort to reduce administrative burdens. Specifically, we seek comment on revising the rule as follows to base the *de minimis* threshold on a provider's assessable revenues rather than on the amount of its contributions: *If a potential contributor's annual assessable revenues in any given year is $50,000 or less, that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing TRS, numbering administration, or shared costs of local number portability. * * *A potential contributor may—but need not—file the quarterly Telecommunications Reporting Worksheet for the year after it qualifies as a de minimis telecommunications provider.*

145. Such a rule would set the *de minimis* threshold based on a telecommunications provider's assessable revenues rather than what it would have contributed. A potentially qualifying telecommunications provider (and its underlying providers) should know with increased certainty whether it will actually qualify as a *de minimis* telecommunications provider as the exemption will no longer depend on each year's quarterly contribution factors. We seek comment on this analysis.

146. If we adopt this approach, is $50,000 the right cutoff for assessable revenues to qualify for the *de minimis* exemption, or should we adopt some other cutoff? We use $50,000 as a potential cut off because today the *de minimis* exemption applies when the contribution would be less than $10,000. If a contributor (under the existing *de minimis* rule) has $50,000 in annual assessable revenues, and we assume an average contribution factor for the year of 17 percent, that contributor would qualify for the *de minimis* exception. We believe that adopting a $50,000 revenues threshold would not change the number of contributors that would qualify for the *de minimis* exemption, but would simplify the application of the *de minimis* rule. Modifying the *de minimis* exemption in this manner could be more equitable, could have a smaller marginal impact, and may better align our requirements for reporting and contributing without affecting those whose ''telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be *de minimis.''* We seek comment on this analysis.

147. We also seek comment on whether such a rule would also reduce the reporting obligations and regulatory uncertainty for *de minimis* telecommunications providers with growing revenues. If so, we ask commenters to quantify the savings. Should we make it optional for contributors to file quarterly Telecommunications Reporting Worksheets for a year after which a contributor qualified as *de minimis*? We seek comment on whether we should adopt a rule that allows telecommunications providers in that position to avoid filing quarterly Telecommunications Reporting Worksheet in the first year for which they are no longer a *de minimis* filer. Such a rule could strike a reasonable balance between providing certainty to small (and growing) businesses in the telecommunications marketplace and the need for all telecommunications providers with a substantial presence to contribute to universal service in an equitable manner. We note that such a rule would not alter the obligation of telecommunications providers to file the *annual* Telecommunications Reporting Worksheet.

148. We also seek comment on other reforms the Commission could make to all of its *de minimis* rules—in the context of funding universal service,

Telecommunications Relay Services (Interstate TRS), North American Numbering Plan, Local Number Portability, and regulatory fees administration programs—to relieve *de minimis* companies of the burden of filing the annual Telecommunications Reporting Worksheet. We seek comment on whether we should reform our rules for filing the annual Telecommunications Reporting Worksheet and set the *de minimis* threshold based on a metric that does not require completing the entire worksheet. For example, should we establish an abbreviated form for telecommunications providers with less than some cutoff value in gross revenues? What metric should the Commission use for determining *de minimis* status? We ask commenters to discuss whether and how alternative metrics would be consistent with the language of section 254(d). What threshold should the Commission establish to permit filing of the abbreviated form? How could we ensure that any revisions to these *de minimis* rules will not undermine the stability of funding for various federal regulatory programs or allow telecommunications providers to evade contribution obligations? Commenters that oppose such suggested rules should provide specific alternative rules and explain how their proposals will support the goals of universal service. We also seek comment on what changes, if any, may be needed in our *de minimis* rules if we were to assess the international telecommunications revenues of all telecommunications providers.

149. We seek comment on what steps would need to be taken to implement any of the potential modifications detailed above or alternative proposals to improve the contribution reporting requirements for *de minimis* providers. We also seek comment on how much time, if any, parties would need to transition to any new rules.

2. Assessing Contributions Based on Connections

150. We seek comment on moving from a revenues-based contribution assessment system to a system based on connections. Nothing in the Act requires contributions to be based on revenues, and the Commission has explored a connections-based methodology in the past. We ask whether a connections-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters.

151. Under a connections-based system, providers would be assessed based on the number of connections to a communications network provided to customers. Providers would contribute a set amount per connection, regardless of the revenues derived from that connection. Under various proposals, there would be one standard monthly assessment for certain kinds of connections, typically provided to individuals, and a higher standard monthly assessment for higher speed or capacity connections, typically provided to enterprise customers. There might be several tiers for assessment based on speed or capacity. The standard assessment and higher assessment levels for higher speed or capacity connections would be calculated by applying a formula based on the USF demand requirement and the number of connections, however that term is defined. This contribution factor would apply equally for all connections that fall into the same category, such that assessments would no longer be based on revenues.

152. In 2001, the Commission first sought comment on replacing the existing revenues-based methodology with one that assesses contributions on the basis of a flat fee ''per unit'' charge. In early 2002, the Commission proposed an assessment mechanism based on the number or speed of connections a contributor provides to a public network. The Commission subsequently sought comment on various iterations of a connections-based system, including hybrid systems that would include a connections and revenues component.

153. Proponents of connections-based methodologies have argued that a connections-based system may provide a more stable contribution base than a revenue-based system because the number of connections has historically been more stable than end-user interstate telecommunications revenues. In addition, proponents have suggested that connections-based assessments may mitigate the need to differentiate between revenues from interstate and intrastate jurisdictions and from telecommunications and non-telecommunications services. Others have raised concerns that a connections-based system would impose new costs on both industry and USAC in the form of new data collection and reporting requirements, necessitating changes to billing and reporting systems. Some have argued that a connections-based system may be at least as complex to implement and administer as a revenue-based system, with many operational details that would need to be resolved. Despite several rounds of comment, the industry as a whole has not reached consensus about whether connections-based assessments are the best way to reform the contribution system: Some providers have strongly opposed a connections system, others have been agnostic about whether a connections-based system is the optimal reform, and still others who once supported a move to a system that includes a connections-based component appear to be re-evaluating their position on this issue. In light of the varied connections-based proposals, the evolution of the communications ecosystem, and the comments received over the past decade, we now seek to refresh the record on the operation of a connections-based system, as well as the costs and benefits of such a system, as discussed below. We ask parties claiming significant costs or benefits of a connections-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

a. Legal Authority

154. Section 254(d) of the Act requires that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' It also gives the Commission broad permissive authority to require contributions from a variety of providers. We seek to refresh the record on whether a connections-based assessment would satisfy the requirements of section 254(d). In responding to the specific questions below, we invite commenters to address how a connections-based system should be structured to fulfill the statutory requirement that telecommunications service providers contribute on an equitable and nondiscriminatory basis. If we were to adopt a connections-based contribution methodology, should we also explicitly exercise our permissive authority over specified providers to make clear that connections provided by those providers would be assessed? How would we ensure that all entities that contribute under a connections-based system are providers of interstate telecommunications?

155. In 2002, the Commission proposed a hybrid revenues/connections-based system that would require a mandatory minimum contribution based on interstate telecommunications revenues for all providers of interstate telecommunications. Under this proposal, all non-*de minimis*

telecommunications carriers would contribute a mandatory minimum, either based on a percentage of total interstate revenue, or based on increasing percentages of telecommunications revenues or increasing flat-fee amounts tied to their telecommunications revenues. Providers with end-user customers would also be assessed on a flat fee basis for residential, single line business, and mobile connections, and on a tiered basis based on speed or capacity for multi-line businesses. Providers with end-user assessments could offset their connections-based assessment against their minimum contribution. In crafting this proposal, the Commission was specifically addressing concerns that a connections-based proposal would be inconsistent with section 254(d)'s requirement that every provider of interstate telecommunications service contribute. We seek to refresh the record on this proposal and seek comment on whether, in fact, a mandatory contribution from every interstate telecommunications carrier is required to satisfy the requirements of section 254(d) that contributions be equitable and nondiscriminatory.

156. We also seek specific comment on whether a connections-based methodology is consistent with the Fifth Circuit's *TOPUC* decision, which held that section 2(b) of the Act prohibits the Commission from assessing revenues associated with intrastate telecommunications service. The Fifth Circuit also interpreted the Act as limiting the Commission's authority to assess international revenues, finding that the Commission's contribution system may not inequitably and discriminatorily assess providers more in universal service contributions than the provider generates in interstate revenues. We seek comment on the Commission's authority under a connections-based system to assess international connections that either originate or terminate in the United States and whether *TOPUC* would apply under such a system. We also seek comment on whether, if we were to adopt a connections-based system, we should adopt an exemption similar to the LIRE under the current revenues-based system for connections that are primarily international in nature, and if so, how to craft such an exemption.

b. Defining ''Connections''

157. We seek comment on the definition of an assessable connection that best meets our proposed goals of promoting efficiency, fairness, and the sustainability of the Fund, as well as other goals identified by commenters. As described below, the question of the appropriate definition of an assessable connection is related to, but may be distinct from, the questions raised in this Notice regarding what providers and services should contribute to universal service.

158. *Facilities-Based Definition.* A facilities-based definition focuses on the physical facility—either wired line or wireless channel—that is provided by the contributor. Under a facilities-based definition, the connection itself, and not the services that are provided over the connection, would be assessed. For example, a physical line to a residential home would be assessed as one ''assessable connection'' even if it provided multiple assessable services to the customer. A multi-line business connection would likewise be assessed based on speed or capacity of the facility and not the services provided over the facility. A facilities-based approach raises complexities, however, to the extent that the assessment varies based on the speed of the facility, in circumstances where the physical connection provides variable speed on demand.

159. If we were to adopt a facilities-based definition, would it be appropriate to build on the definition that was suggested in late 2002: a facility that provides end users with ''access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line''? For example, we seek comment on the following potential definition of connection: *Connection. A facility that provides end users with access to any assessable service, whether circuit-switched, packet-switched, wireline or wireless, leased line or provisioned wireless channel.* Alternatively, we seek comment on the following potential definition of connection, building on the FCC Form 477: *Connection. A wired line or wireless channel used to provide end users with access to any assessable service.* Are there any significant differences in what would qualify as ''connections'' under these definitions?

160. We believe either definition could be used with either of the two general approaches to defining assessable services described in Section IV of this Notice. That is, either definition could be used either if, as described in Section IV.B, we were to continue defining assessable services as telecommunications services plus certain enumerated other services, or if, as described in Section IV.C, we were to adopt a more general definition of assessable services. We seek comment on this analysis.

161. We also seek comment on the impact of adopting a facilities-based definition of connection. How would adopting such a definition affect the distribution of contribution obligations among different industry sectors, or the relative contribution burden borne by mass market versus enterprise customers? Would such a definition provide predictability for contributors, while retaining sufficient flexibility to accommodate the evolution of the telecommunications marketplace? Are there variations on the definitions, or alternate definitions, that would better meet our proposed goals for contribution reform?

162. Service-Based Definition. Under a service-based definition, the definition of the connection ''unit'' would focus on the service or services that are delivered over the facility. Under such a definition, each interstate telecommunications service using the connection would be assessed as one ''unit,'' as could any service that had an interstate telecommunications component. For example, in contrast to the facilities-based definition, if a customer purchases two services that we have determined are assessable and that are delivered over the same facility, the provider would be assessed for two connections. Multi-line business services could likewise be assessed based on the services that are provided over the connection. For example, we seek comment on the following potential service-based definition of connection: *Connection. An assessable service provided to an end user.*

163. As above, we seek comment on the impact of adopting this definition of connection. How many total connections would there be under this definition, given the different approaches to defining assessable services in this Notice? Would this definition raise questions regarding whether particular offerings were one ''service'' or multiple bundled services? For example, under such a definition, should a subscriber purchasing both text messaging service and voice service be counted as two connections or one? How would family plans or other multi-user or multi-device scenarios be treated?

164. How would adopting this definition affect the distribution of contribution obligations among different industry sectors, or the relative contribution burden borne by mass market versus enterprise customers? Would this definition provide predictability for contributors, while retaining sufficient flexibility to accommodate the evolution of the telecommunications marketplace? Are

there variations on this definition, or alternate definitions, which would better meet our proposed goals for contribution reform?

165. We also seek comment on alternative service-based definition that would focus on *usage* (*i.e.,* how much throughput actually traverses the connection in a given period).

166. *Defining ''End User.''* We also seek comment on whether a definition of connection should be limited to connections provided to ''end users.'' In prior years, the Commission sought comment on whether to apply the same definition of end user that is used under the current revenue-based system. As discussed above, under the existing system, ''end users'' include purchasers of retail interstate telecommunications or telecommunications services that do not contribute on their finished offerings. End users do not include entities that purchase wholesale inputs and contribute on the services they provide to other customers. Would including the use of the term ''end user'' in the definition of a connection perpetuate some of the challenges we see under the current revenue-based system discussed above, such as, for example, the difficulty of determining whether a customer is an end user or reseller of specific services for purposes of USF contribution obligations? How should we define end user if we adopt a connections-based approach? Should we, for instance, define an end user as a residential, business, institutional, or governmental entity who uses the services provided for its own purposes, and does not sell the service to other entities, or incorporate the service into another service sold to other entities?

167. Would a system that requires each provider to ''pay its own way''—that is, each provider would contribute based on the connection it provides to another entity—be simpler from a compliance and administrative perspective? In 2002, the Commission sought comment on a proposal that would split connections-based contribution obligations between switched access and interstate transport providers. Under such an approach, a provider of both local and interexchange services to the end user would be assessed two units per connection (one for access and one for transport), while a provider that provided only local service would be assessed one unit and the interexchange carrier would be assessed one unit. We invite comment on whether a more general system of this type that requires each provider of connections to contribute would be simpler from a compliance and administration perspective than a system that requires only the provider with the relationship to the end user customer to contribute. For instance, as discussed above, if we were to adopt a service definition of connection, and Carrier A sells a private line to Carrier B, and Carrier B in turn uses that circuit to provide both an enterprise communications service and VoIP to its retail customer, should Carrier A be assessed one unit for that high-speed line, while Carrier B is assessed one unit for the communications service and a second unit for the VoIP service?

168. *Connections Provided to Lifeline Subscribers.* Today there are approximately 14.8 million Lifeline subscribers. We seek comment on whether the Commission has statutory authority to exclude from assessment connections provided to Lifeline subscribers. Would it be consistent with section 10 to forbear from imposing contribution obligations on such connections? How would the exclusion of such connections impact a connections-based regime? What would be the policy justifications for excluding these connections from contribution obligations? Alternatively, should such connections associated with Lifeline services be assessed at a pro-rated or reduced rate, and if so, what would be an appropriate amount?

c. Trends in Connections

169. We seek comment regarding trends in connections over time. We seek data to project the number of connections that exist today under the facilities-based definitions discussed above. If we were to adopt a service-based definition, the number of connections would largely depend on how narrowly or broadly we were to define the relevant assessable services. We invite commenters to present data and their underlying assumptions regarding the number of connections under the alternative connection definitions discussed above.

170. The FCC Form 477 data collection provides some information that may be useful in projecting the number of connections. As discussed above, FCC Form 477 counts broadband connections separately from connections that are used for local telephone service, which provides some basis for estimating the number of connections if we were to exercise our permissive authority over broadband Internet access services and also adopted a definition of connections that counted broadband separately from voice. Notably, because the form is designed mainly to track residential connections, it does not capture many connections provided to businesses, governmental entities, and other large institutions.

171. There were 616 million connections reported under the FCC Form 477 connection categories in 2010: 117 million local landlines (switched access lines), 32 million interconnected VoIP subscriptions, 285 million mobile telephone subscriptions, and 182 million broadband connections. If one assumes continued growth in mobile subscriptions, interconnected VoIP and broadband connections, the total number of connections could grow to approximately 800 million connections under the FCC Form 477 connection categories by 2015.

172. We seek comment on our analysis of the 477 data and invite commenters to present their own analysis and underlying assumptions. In particular, how many enterprise connections are there under different definitions of connections and of assessable enterprise services? And if we were to adopt a facilities-based definition of connections, rather than the service-based approach used in Form 477, how many connections are there, and what is the likely trend in the number of connections over time? To what extent are the landlines or mobile subscriptions reported in FCC Form 477 also providing broadband?

d. Assessment and Use of Speed or Capacity Tiers

173. Another key question is whether a connections-based assessment should be based on speed or capacity tiers and how to define any such tiers. In the past, the Commission's proposals have assumed a connections-based methodology would classify connections into various tiers, and each connection within a tier would be assessed the same flat fee. We seek comment on how assessment based on speed or capacity tiers would operate under a service or facilities-based definition of ''connection,'' and whether such an assessment structure would further our proposed reform goals of promoting efficiency, fairness, and sustainability of the Fund.

174. *Determining the Per-Unit Assessment.* In the past, the Commission has sought comment on grouping residential, single-line business, and mobile wireless connections together in a separate category from multi-line business connections, and assessing each based on a flat fee. Under such a system, the initial proposed amount for the residential, single-line business, and mobile wireless connections has been in the range of $1 per month. The residual USF demand would then be met

through assessments on multi-line business connections based on the number and capacity of the connections. We seek comment to refresh the record on such an approach. How would the contribution amount for a typical consumer vary under such an approach compared to the revenues-based approach in place today?

175. If we were to adopt a connections-based approach, should certain providers be eligible for special consideration or exemption? We seek comment on whether a connections-based system that provides special treatment for a myriad of services would meet our proposed goals of ensuring sustainability of the Fund, while simplifying compliance and administration. As noted above, a recent development is the growth in machine-to-machine connections, enabling such innovations as smart meter/smart grids, remote health monitoring, or supply chain tracking. To the extent we were to exercise permissive authority over some or all machine-to-machine connections, should they be assessed at the same level, or flat rate, as other connections? If not, how should they be assessed?

176. Another question that would need to be resolved under a connections-based approach with tiers is whether and how to update the tiers and/or assessment amounts as business and residential users move to higher bandwidth services and new technologies and services develop. In previous Notices, the Commission recognized that, to ensure an appropriate amount of funds for universal service, it would need to revisit and adjust the assessment amount periodically. Recently, the Commission has taken significant strides to minimize future growth of the Fund by adopting a budget in the recent *USF Transformation Order* and a savings target in the *Lifeline and Link-Up Reform and Modernization Order.* These measures to instill fiscal responsibility in these programs are in addition to the caps on other universal service support mechanisms (*i.e.,* the schools and libraries and rural health care mechanisms). We seek comment on how often we should revisit any per-unit amount, if we were to adopt a connections-based proposal, in light of these reforms. Would a semi-annual or annual review be sufficient to meet the needs of the Fund? We also seek comment on whether any re-evaluation of the assessment should happen on a set schedule or an ad hoc basis, either on our own motion or at the request of industry participants or USAC. What factors should we consider in determining whether to adjust the assessment? When periodically readjusting the unit amounts, should we aim to maintain the relative proportion of contribution burdens between residential and business consumers? How could that proportion be accurately determined?

177. *Tiers.* In 2002, the Commission proposed that contributions from providers of multi-line business connections be a residual amount calculated to meet the remaining universal service funding needs not met by contributions for residential, single-line business, and mobile connections. The Commission reasoned that this proposal would make contribution obligations more predictable and understandable for residential, single-line business, and mobile customers, and that multi-line businesses may be better equipped to understand the fluctuations in assessments from quarter to quarter. We seek comment on whether this reasoning remains valid in today's marketplace.

178. In the past, the Commission sought comment on defining a connection as either a residential/single-line business or a multi-line business connection based on whether the residential/single-line business or multi-line business subscriber line charge (SLC) is assigned to the connection. We seek to update the record on whether this delineation is an effective way to identify residential and single-line business connections in today's market, particularly given the growth in wireless and VoIP connections—which typically do not charge SLCs or their equivalent. Not only is such a method for distinguishing residential connections from business connections possibly outdated today, but we are concerned it will become increasingly more so as users move to alternative providers that do not charge SLCs. We seek comment on whether, if we adopt a connections-based approach, we should distinguish between residential/mass market connections and business/enterprise connections. And, if so, we seek comment on other objective measures aside from the SLC that we could use to distinguish between these two categories of connections.

179. We understand anecdotally that many companies are moving away from purchasing mobile service directly for employees in favor of providing employees with reimbursements for their personal mobile monthly plans. To the extent we were to make a distinction between residential and business connections, how should such connections be classified as residential or multi-line business connections? How would contributors distinguish such connections absent a corporate identifier on the account? We seek comment on these issues and whether such a distinction serves our proposed policy goals of administrative efficiency, fairness, and sustainability.

180. *Tier Structures.* Over the years, the Commission and the industry have proposed various tiers to calculate assessments for multi-line business connections, with no one approach emerging as the preferred alternative. In 2002, the Commission proposed a structure of three tiers of up to 1.544 Mbps, 1.544 to 45 Mbps, and 45 Mbps or higher for multi-line business connections. Later in 2002, the Commission updated the proposed tiers to four tiers of up to 725 kbps, 726 kbps to 5 Mbps, 5.01 Mbps to 90 Mbps, and greater than 90 Mbps for multi-line business connections. At that time, the Commission sought to set the speed ranges so that then-common service offerings would fall well within each tier in order to minimize market distortion. Subsequently in 2008, the Commission proposed just two tiers of up to 64 kbps and over 64 kbps for business services. Commenters have also proposed different sets of tiers. AT&T, for example, proposed three tiers of up to 25 Mbps, over 25 Mbps up to and including 100 Mbps, and over 100 Mbps for dedicated business connections.

181. In today's ever evolving marketplace, there is increased demand for multi-line business connections to have more bandwidth. One of the proposed goals of our reformed contribution system is to simplify administration and reporting. Is there a way to structure the speed tiers in a future-proof manner? Or, would a system based on available speed tiers inevitably become outdated as the communications industry continues to evolve? Is there a reasonable way to have tiers automatically adjusted, for example by setting tiers based on percentile, such that the slowest quartile of connections would fall into one tier, the next quartile in another tier, etc.?

182. We seek comment on whether any of the previously proposed tier structures would be appropriate in today's marketplace, and whether any such tiers should be limited to business customers or whether they should extend to residential or mass market connections as well. We seek to refresh the record in light of recent actions taken in the *USF–ICC Transformation Order and FNPRM* and other pending proceedings. For instance, in establishing tiers, to what extent, if at all, should we take into account the Commission's decision to establish 4

Mbps down/1 Mbps up as the minimum speed for fixed broadband connections under the Connect America Fund? Should speed tiers for universal service contribution purposes be based on actual speeds or advertised speeds? Is one approach preferable to another for purposes of auditing and enforcing compliance with our contributions rules?

183. To the extent commenters believe one of the previously proposed tier structures is appropriate for today's market, we seek detailed comments to support such a position. Additionally, we encourage commenters to propose a tier structure that accounts for the qualities of connections in the marketplace today. In the past, the Commission sought comment on a tier structure based on speed. Should tiers also be set based upon capacity, or the total volume of data that can be sent and/or received over the connection by the end user over a period of time? Commenters should explain why they propose tiers at the particular capacity range and propose the appropriate assessment amount for each tier. Commenters should also discuss how we can structure the tiers so that they will accommodate future evolution. We seek to minimize the potential for market distortion based on the tier structure; commenters should address how their proposal addresses this concern in their responses. Commenters proposing new tier structures should also provide an analysis of the impact on the Fund and the relevant burdens to residential and business consumers.

184. Would the current FCC Form 477 tier structure work in the context of a USF connections-based assessment? For example, FCC Form 477 tracks facility-based broadband connections in ten different technology categories (*e.g.,* asymmetrical and symmetrical xDSL, cable modem, fiber-to-the-home, mobile wireless) based on transfer rates ranging from 200 kbps to greater than 100 mbps. We seek comment on whether this categorization and tier structure as well as the other data collection requirements in the FCC Form 477 could work for universal service contribution purposes, or whether they could be easily modified to satisfy the requirements of both the FCC Form 477 and any established USF contribution rules and requirements. If we were to modify our FCC Form 477 data collection, should we also make corresponding modifications to the tiers for purposes of USF contributions?

185. While multi-line business connections may provide a specific maximum level of speed or capacity, other connections provide customers, through contractual agreements, with the option of utilizing additional speed or capacity on a short-term basis. One of the challenges of a tiered connections-based approach is how it would address connections that provide varying speed at different points in time. For example, should we consider how ''burstable'' bandwidth would be assessed under a connections-based system? Burstable bandwidth allows a connection to exceed its stated speed, usually up to a pre-chosen maximum capacity for a period of time, such as during periods of heavy network activity or peak network usage. We seek comment on what rules should be adopted to address such situations, if we were to adopt a connections-based system.

186. Some commenters argue that there is little correlation between connection speed and telecommunications usage. These commenters ask whether it is more appropriate to base the tiers on usage rather than speed. Under prior connections-based proposals, contributors would be assessed for multi-line business connections based on the maximum amount of bandwidth they allocate to the connection, not the actual amount of bandwidth used. Because customers often purchase excess bandwidth for backup or future growth, some commenters argue that assessing a connection at the maximum available speed taxes spare bandwidth and could lead to poor network management practices. We seek comment on this position. We also seek comment on how a provider would measure the actual usage of a customer's connection and the burdens associated with such reporting. Finally, we seek comment on how we would audit actual usage.

e. Policy Arguments Related to Connections-Based Assessment

187. In 2002, the Commission outlined a number of potential benefits of a connections-based assessment methodology: the number of connections has been more stable than interstate revenues and therefore connections-based assessment may provide a more predictable and sufficient funding source for universal service; under a connections-based approach, providers would not have to allocate revenues between interstate and intrastate jurisdictions or between telecommunications and non-telecommunications services; and under a connections-based end-user approach, only one entity—the one with the direct relationship with the end user—would be responsible for contributing, thereby potentially reducing the complexities associated with collecting and reporting USF fees. We seek comment to refresh the record on these issues given the changes that have occurred in the telecommunications marketplace since 2002 and the potential rule changes discussed in this Notice. Is a connections-based contribution methodology consistent with the proposed goals of having a contribution methodology that is efficient, fair, and sustainable?

188. *Distinguishing Telecommunications from Non-Telecommunications.* In 2002, the Commission and commenters suggested as a potential benefit that a connections-based methodology might not require carriers to distinguish between telecommunications and non-telecommunications services, distinctions that may be increasingly difficult as the marketplace evolves. We seek comment above on approaches to provide clarity to contributors with respect to specific services, without the need to classify those services as either information services or telecommunications services. We also seek comment on assessing revenues associated with information services. In light of those potential approaches, is this potential advantage of a connections-based methodology still relevant? If we were to adopt a facilities-based connections approach, should we make an affirmative finding that each connection within the scope of our definition ''provides interstate telecommunications'' in order to subject that connection to assessment?

189. *Jurisdictional Considerations.* The Commission and industry participants have suggested in the past that a connections-based system might mitigate the need to differentiate between interstate and intrastate jurisdictions. We seek comment on whether this remains a relevant consideration.

190. In the connections-based methodology proposed in 2002, the Commission stated that international-only and intrastate-only connections would be exempt because they do not have an interstate component. We seek comment on how specifically we would determine whether a particular connection should be deemed to be intrastate-only for contribution purposes, if we were to adopt a connections-based methodology, and how such a rule could be applied. We note that today, private lines with less than ten percent interstate traffic are deemed to be jurisdictionally intrastate. For contribution purposes, the Form 499 instructions specify that if over ten percent of the traffic is interstate, all of

the revenues for that line are classified as interstate. We seek comment above in this Notice on a revenues-based approach that would be simpler to administer, which would allocate revenues to the different jurisdictions according to a set percentage. If we were to adopt a connections-based approach, should we adopt a rule that any connection that provides the capability to originate or terminate communications that may cross state lines is subject to assessment, regardless of the physical end points of the facility or the actual traffic carried on a particular circuit?

191. To the extent we exercise our permissive authority to assess broadband Internet access connections, we seek comment on whether such connections should be presumed interstate for purposes of universal service contributions. Should we conclude that any connection that connects to an Internet point of presence should be deemed interstate for federal USF contribution purposes? Would such a rule allow states to assess connections (or revenues associated with connections) to support state universal service funds? Would a connections-based system increase compliance burdens if states continue to employ a revenues-based assessment for state-based funds? What is a simple way to determine jurisdiction for connections in a manner that is fair and competitively neutral, and could such an approach reduce compliance burdens on contributors?

192. *Consumer Impact.* In the past, certain contributors have argued that a connections- or numbers-based contribution methodology would disproportionately impact vulnerable populations, such as low-income consumers and the elderly. How would moving to a connections-based approach change the relative distribution of the contribution burden between enterprise users and consumers, as well as among different types of enterprise users and consumers? Is moving to a connections-based approach where connections are assessed a flat rate (or a flat rate within a tier) fair to low-income consumers and other users on low-cost service plans? Are there modifications that could be made to a connections-based methodology to make the level of assessment fairer to consumers on low-cost service plans? If we were to adopt a connections-based approach, would low-income households be likely to see a contribution pass-through charge for a larger percentage of their monthly telecommunications bill than higher-income households? Would low-volume customers bear an assessment that constitutes a larger percentage of their bill than high-volume users?

f. Implementation

193. Implementing a connections-based system would presumably require new data collection and reporting requirements and, at least in the near term, impose additional costs on both filers and USAC to implement new reporting systems. A connections-based system could also present complexities related to compliance and auditing, particularly because connections are not generally reported for other governmental purposes. Further, a move to a connections-based system may affect other programs that currently report on the FCC Form 499, including Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration. Finally, a new system would require some period of transition. We seek comment on all these issues below.

194. *Reporting.* We seek comment on how to implement reporting requirements under a connections-based contributions system. Under the existing revenue-based contribution methodology, contributors report to USAC their historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on the FCC Form 499–Q and their gross-billed and actual collected end-user interstate and international revenues annually on the FCC Form 499–A. USAC then bills contributors for their universal service contribution obligations on a monthly basis based on the contributors' quarterly projected collected revenue. Contributors report actual revenues on the FCC Form 499–A, which USAC uses to perform true-ups to the quarterly projected revenue data.

195. How should a connections-based system be implemented? In particular, we seek comment on the specific changes necessary to enable USAC to administer the Fund under a connections-based system. How would contributors report the number and speed or capacity of their connections under a connections-based assessment methodology? For a service-based connections methodology, how should providers report the service type? Should we continue to use a FCC Form 499 or use a different system, and why? What would be the administrative impact of a new reporting system on providers and on USAC as the administrator of the Fund? Could we modify the FCC Form 477 to capture the data necessary for a connections-based system, thus eliminating the need to file separately for contribution purposes? What measures should we take to ensure that providers would not be able to avoid their contribution obligation? To what extent do connections fluctuate due to churn or other factors, and, as a result, how often should providers report their data to ensure the stability and sufficiency of the Fund? Should we limit reporting requirements to twice a year, to coincide with the requirement to report connections data on the FCC Form 477? We seek comment on whether reporting only twice a year would satisfy our proposed goal of a more simplified contribution system. We also seek comment on the potential impact of a six-month reporting interval on periodic adjustments to the per-connection assessment. Would such a reporting schedule provide USAC and the Commission with the data necessary to effectively administer the universal service programs? We specifically seek comment and data on whether it is necessary to monitor individual provider fluctuations through frequent reporting or whether less frequent reporting would suffice.

196. Alternatively, we seek comment on the costs and benefits of reporting at monthly or quarterly intervals. Since a more frequent interval would likely provide a larger number of ''snapshots'' of a contributor's connection counts over a year, would a more frequent interval provide more accurate data and lead to more stability in the Fund than would a six-month interval? Would a more frequent reporting period make adjustments to the contributions requirements more incremental? Would longer or shorter reporting intervals advantage or disadvantage some types of providers more than others? In 2002, the Commission sought comment on a monthly reporting system under which the contributor would report the number and speed or capacity of their connections at the end of each month on a new FCC Form 499–M. Under that approach the new form would also serve as a contributor's monthly bill. We seek comment on the costs and benefits of such an approach.

197. *Costs Associated with Implementing a Connections System.* We seek comment on contributors' out-of-pocket costs for implementing a new connections-based contribution methodology. Would contributors be able to use their current billing and operating systems to report connections for universal service contributions? If not, what would be the incremental costs associated with modifying billing systems and internal controls and processes to collect and track

connections for purposes of reporting and contributing to the Fund? Would contributors have to implement entirely new systems to track the type of data needed to report connections? Does the answer to this question depend on whether the Commission adopts the FCC Form 477 connection categories as opposed to other categories of providers or services whose connections are assessable? Are there cost savings that could be realized by moving away from the current system, which requires contributors to report revenues quarterly (projected) and annually (actual) for USF purposes? Would those costs vary depending on the definition of connections we adopt? We also seek comment on whether the cost of updating billing and internal systems for this regulatory purpose would outweigh any benefit achieved. What would be the implications for reporting for other regulatory programs such as regulatory fees, Interstate TRS, and the North American Numbering Plan? Would increased operational costs negatively impact certain carriers more as compared to other carriers (for example, smaller rate of return companies that recover some of these costs from high-cost loop support, which is capped)?

198. We specifically seek comment on any implementation costs associated with other programs that rely on the data reported on the FCC Form 499–A. For example, if we were to move to a connections-based system for contributions, would there be additional costs associated with reporting for the Interstate TRS Fund, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs which currently rely on the FCC Form 499–A data? Would a change in the contribution system to a connections-based approach only be feasible and cost-effective if these other programs also changed to a connections-based approach? We also ask whether adopting a connections-based system would increase compliance burdens if states continue to employ a revenues-based assessment.

199. We also seek to refresh the record on whether there are other costs associated with a connections system, and in particular ask providers if there are any new costs that were not foreseen when we last asked for comments on this methodology. Would the cost of a new assessment methodology increase for certain classes of customers or certain industry segments? To what extent would this analysis change depending on how a connection is defined and assessed? Do the additional costs associated with implementation and reporting requirements outlined below outweigh the benefits of moving to a connections-based methodology?

200. *Auditing.* Audits are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse. Any new connections methodology must be auditable in order to ensure that contributors are reporting accurately, and that the system operates in an equitable and nondiscriminatory manner, maintains stability in the contribution base, and minimizes market distortions and gamesmanship. Auditing a connections-based system could be difficult, however, if the manner in which providers track their connections for business reasons does not overlap with the Commission's definitions of ''connections'' and ''tiers.'' As previously noted, unlike revenues, connections are not universally tracked, and thus there are no standards or regular means of auditing a ''connection.'' In addition, unlike revenues, ''connections'' are not reported to other federal agencies, such as the SEC, nor are connections routinely tracked on a company's books. Because companies would be tracking connections solely or primarily for the Commission, we seek comment on how to structure a connections-based system to be auditable and enforceable. How, in fact, would companies track their connections for USF contribution reporting purposes? Would companies need to create internal records solely for this purpose? How would an auditor verify the accuracy of the internal records, especially in light of customer churn and customer change orders? Because revenue is reported for other governmental purposes there are, to some extent, inherent checks and balances built into a revenues-based system. We seek comment on whether any potential lack of checks and balances under a connections system is a fatal flaw, or if it could be remediated. Proponents of a connections-based system should provide specific details about how contributors would report their data and how auditors could verify the accuracy of connections data reported. In addition to audits, what other steps should be taken under a connections-based system to detect and deter waste, fraud, and abuse?

201. We seek comment on how, under a connections-based system, we could create the proper incentives for providers to accurately report connections data. What types of procedures are necessary to verify the accuracy of the number of connections reported by a provider? How would USAC measure the accuracy of the data, especially given customer churn that may occur between reporting periods?

202. *Effect on Other Programs.* As in previous comment cycles, we ask parties to provide comment on the impact of moving to a connections-based approach on the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs. The revenue information currently reported on an annual basis in FCC Form 499–A is also used to calculate assessments for these programs. We ask parties to provide comment on the best approach for ensuring proper funding of these programs were we to move to a connections-based methodology. Should contributors continue reporting gross billed end-user revenues for purposes of these programs, and if so, should they continue to report on an annual basis? Could we dramatically simplify the FCC Form 499 for purposes of revenue reporting in that instance, such as by eliminating the multi-line breakout of reported revenues into sub-categories? We specifically seek comment on whether to maintain revenue-based reporting for the regulatory fee program if we move to a connections-based approach for USF contributions and/or the other programs.

203. If we were to adopt a connections-based approach for the USF, should we also move to a connections-based approach for Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs? If so, would a connections-based approach for these programs vary, if at all, from a connections-based approach for the USF? We specifically seek comment on how a connections-based system could be implemented to satisfy the requirements of section 715 of the Act. This section requires that each interconnected VoIP service provider and each provider of non-interconnected VoIP service shall participate in and contribute to the Interstate Telecommunications Relay Services Fund in a manner ''consistent with and comparable to the obligations of other contributors to such Fund.'' Finally, are there alternative ways to calculate contributions for the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees programs?

204. *Transition.* A connections-based methodology would constitute a substantial change from the current *revenue*-based system and would likely require a transition period, especially if reporting entities need to implement

new billing and accounting systems and a process for recording connection counts in a manner that is auditable. We seek comment on what steps would need to be taken to transition between the current revenues-based system and a connections-based system and how much time would be needed to ensure that the new process is applied in an equitable manner.

205. If we were to adopt a connections-based methodology, the Commission and USAC would likely need to go through multiple reporting cycles to determine whether information is being reported consistently and to determine whether contributors understand what information they are being asked to report. In addition, contributors and USAC would need time to update their billing and tracking systems to accommodate the new methodology. Is a one-year transition period sufficient to ensure that all affected parties would have adequate time to address any implementation issues that arise? How much time would be necessary for contributors, including new contributors, to adjust their record-keeping and reporting systems in order to comply with new reporting procedures? Are there new considerations that would favor a longer or shorter transition period? Would there be a benefit in adopting different transition periods for residential and business markets?

206. We also seek comment on the value of requiring dual reporting during all or some of the transition time—where reporting entities would continue to report and pay under the current revenues-based system, while they also begin reporting under the new system. Would having providers report under both systems for a specified amount of time during the transition provide the opportunity for both providers and USAC to address unforeseen implementation issues that are likely to arise under the new reporting system? Should new filers begin reporting sooner since USAC does not have any historical data on their revenues and services?

3. Assessing Contributions Based on Numbers

207. We seek comment on moving away from the current revenues-based contribution system and adopting a numbers-based contribution methodology. The Commission has explored a numbers-based methodology in the past, including as recently as 2008, when it sought comment on using telephone numbers as the basis for a new contributions system. We seek to refresh the record given developments in technology and communications.

208. Under a numbers-based system, in its simplest form, providers would be assessed based on their count of North American Numbering Plan (NANP) phone numbers. There would be a standard monthly assessment per phone number, such as $1 per month, with potentially higher and lower tiers for certain categories of numbers based on how these numbers are assigned or used. The monthly assessment per number would be calculated by applying a formula based on the USF demand requirement and the relevant count of numbers, however that term is defined. This contribution factor would no longer be based on revenues.

209. In 2002, the Commission first sought comment on replacing the existing revenues-based methodology with a system that would assess providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned numbers based on their speed. The Commission also sought comment on how to treat multi-line switched business services, such as Centrex and private branch exchange, and other types of services, such as electronic fax services under a telephone-number based approach. Thereafter, in the *2008 Comprehensive Reform FNPRM,* 73 FR 66821, December 12, 2008, the Commission sought comment on a series of proposals to adopt a new contribution methodology based on assessing telephone numbers. The FNPRM contained three proposals, each with a numbers-based assessment component. Two of the proposals (2008 Appendix A Proposal and 2008 Appendix C Proposal) would have assessed USF contributions based on telephone numbers used for residential services, at a flat $1.00 per month charge for each number, and would have assessed business services based on connections. The third proposal (2008 Appendix B Proposal) would have assessed USF contributions based on telephone numbers used for consumer and business services, at a flat $.85 per month charge for each number.

210. We seek comment on whether a numbers-based methodology would further our proposed reform goals of greater administrative efficiency, fairness, and sustainability of the Fund. We also seek comment on the costs and benefits of a numbers-based contribution methodology. We ask parties claiming significant costs or benefits of a numbers-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

a. Legal Authority

211. We seek comment on our legal authority to adopt a numbers-based contributions methodology. Section 254(d) of the Act requires that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' Section 254(d) also provides the Commission with permissive authority to require ''providers of interstate telecommunications'' to contribute to the Fund. Title I of the Act gives the Commission ancillary jurisdiction over matters reasonably related to ''the effective performance of [its] various responsibilities'' where the Commission has subject matter jurisdiction over the service.

212. The Commission previously has sought comment on whether the Commission's ''plenary authority'' over numbering in section 251(e) provides additional authority to adopt a numbers-based methodology. The Commission has ''exclusive jurisdiction over those portions of the NANP that pertain to the United States.'' In the *VoIP 911 Order,* the Commission relied on its section 251(e) authority to require interconnected VoIP providers to provide E911 services. In so doing, the Commission noted that it exercised its authority under section 251(e) because, among other reasons, ''interconnected VoIP providers use NANP numbers to provide their services.''

213. We seek to refresh the record on the Commission's authority pursuant to sections 254(d), 251(e), and Title I of the Act to establish a numbers-based contributions methodology. Under a numbers-based approach, some providers could be required to contribute directly to the Fund that historically may have contributed indirectly or not at all. We seek comment on whether the public interest would be served if the Commission were to exercise its permissive authority to require these providers to contribute to the Fund. What is the extent of the Commission's ancillary authority under Title I of the Act? Does the provision of a service that relies on the assignment of an assessable number to an end user bring such a service offering under the Commission's broad subject matter jurisdiction because it involves, in some manner, ''interstate * * * communication by wire or radio?'' Does

the Commission's plenary authority over numbering under section 251 of the Act support use of a numbers-based contribution methodology?

214. We invite commenters to address how a numbers-based system should be structured to fulfill the statutory requirement that telecommunications service providers contribute on an equitable and nondiscriminatory basis. If we were to adopt a numbers-based contribution methodology, should we also explicitly exercise our permissive authority over providers of telecommunications or specified services to make clear that providers of those services would be assessed? How would we ensure that all entities that contribute under a numbers-based system are providers of interstate telecommunications?

b. Defining Assessable Numbers for Contribution Purposes

215. We seek comment on *which* numbers should be assessed under a numbers-based contribution methodology. We also seek comment on whether defining assessable numbers or alternatives that commenters may suggest would best further our proposed goals for contribution reform. We specifically ask commenters to estimate the per-number assessment under their preferred definition of assessable numbers and the scope of any exemptions that they propose. We also ask parties to address the impact of differing definitions of assessable numbers on who would contribute in the future, compared to today.

216. *Definition of Assessable Numbers.* We seek comment on how the Commission should define an ''assessable'' number for purposes of a numbers-based contributions methodology. In other contexts, the Commission has defined ''numbers'' for purposes of Commission reporting requirements. For example, the Commission requires that each telecommunications carrier that receives numbering resources from the North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or another telecommunications carrier, report its numbering resources in each of six defined categories of numbers set forth in § 52.15(f) of our rules. In the regulatory fee context, the Commission has adopted the category of ''assigned numbers'' as the starting point for determining how to assess fees on certain providers, but found it necessary to modify that definition to account for different regulatory contexts. Specifically, in assessing regulatory fees for commercial mobile radio service (CMRS) providers that report number utilization to NANPA based on the reported assigned number count in their Numbering Resource Utilization and Forecast (NRUF) data, the Commission requires these providers to adjust their assigned number count to account for number porting. The Commission found that adjusting the NRUF data to account for porting was necessary for the data to be sufficiently accurate and reliable for purposes of regulatory fee assessment. We seek comment on whether we should adopt any of these definitions of numbers for purposes of defining an ''assessable number'' for USF contributions.

217. Specifically, we seek comment on the following definition of assessable numbers: *An ''Assessable Number'' is a NANP telephone number that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telecommunications network in the United States and its Territories and possessions. Assessable Numbers include geographic as well as non-geographic telephone numbers (such as toll-free numbers and 500–NXX numbers) as long as they meet the other criteria described in this part for Assessable Numbers.*

218. We seek comment on whether this definition furthers our overall proposed goals of reform. Is the above definition sufficiently broad to capture all types of numbers, including those associated with services aimed primarily at international calls that either commence or end in the United States and its Territories? Should we include in the above definition of numbers toll-free numbers that are also part of the North American Numbering Plan, but are governed by §§ 52.101 through 52.111?

219. We also seek comment on alternatives. For instance, should we define assessable numbers consistent with the definition of ''Assigned numbers'' in Part 52: ''Assessable numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assessable numbers.'' Would such a definition include NANP numbers assigned to mobile broadband-only devices, such as 3G tablets or laptop cards? If not, should we modify this definition, or would it be appropriate to exclude numbers associated with such devices and services associated with them? Commenters proposing alternative definitions of ''assessable numbers'' should explain how their proposal satisfies our proposed goals for contributions reform.

220. We note that any definition of assessable numbers may exclude special access services and possibly other services that are clearly assessed today, but that do not include a telephone number. In addition, such a definition may exclude some of the services mentioned in Section IV.B of this Notice. We seek comment on how such services should be treated under a pure numbers-based approach.

221. *Cyclical Numbers.* We seek comment below on whether contributors should report numbers on a monthly basis. If we were to adopt such a rule, should numbers used for intermittent or cyclical purposes (and that may not be fully in use at the time of a monthly reporting obligation) be excluded or included from the definition of Assessable Numbers?

222. We define numbers used for cyclical purposes as numbers designated for use that are typically ''working'' or in use by the end user for regular intervals of time. These numbers include, for example, an end-user's summer home telephone number that is in service for six months out of the year. In the *NRO III Order,* 67 FR 6431, February 12, 2002, the Commission clarified that these types of numbers should generally be categorized as ''assigned'' numbers if they meet certain thresholds and that, if they do not meet these thresholds, they ''must be made available for use by other customers'' (*i.e.,* they are ''available'' numbers). Is there a bright-line way for providers to determine, and for the Commission or USAC to verify and audit, which numbers are cyclical versus which numbers are not cyclical? If not, would excluding such numbers be consistent with our proposed goals for contribution reform? What are the implications of excluding such numbers in the contribution base? Would excluding these numbers be consistent with the requirements of section 254(d)? What would be the policy justifications for excluding or including these numbers in the contribution base? For example, one policy reason for assessing cyclical numbers would be that each cyclical number obtains the full benefits of accessing the public network. If cyclical numbers are not excluded from the definition of assessable numbers, should such numbers be assessed at a pro-rated

or reduced rate? We ask commenters to provide data as to the count of numbers that would fall into the category of cyclical numbers, and explain how the Commission and USAC would verify and audit the use of such numbers.

223. *Assigned but Not Operational Numbers.* Section 52.15 of our rules define ''assigned numbers'' as numbers that have been assigned to a customer (within a period of five days or less) but have not yet been put into service. Since providers generally do not bill for services that have yet to be provisioned and therefore are not compensated for services during the pendency of the service order, should such numbers be excluded from the definition of Assessable Numbers? We seek comment on whether our definition of assessable numbers should include numbers that are not yet operational to send or receive calls. Would it be consistent with the ''equitable and non-discriminatory'' language in section 254(d) to exclude these numbers? Would the exclusion of assigned but not operational numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? In the alternative, should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into the category of ''assigned but not operational numbers.''

224. *Available but Not Assigned Numbers.* We seek comment on whether the definition of assessable numbers should include or exclude other numbers that are held by service providers from the definition of Assessable Numbers. In particular, should we exclude from the definition of Assessable Numbers those numbers that meet the definition of an Available Number, an Administrative Number, an Aging Number, or an Intermediate Number as those terms are defined in § 52.15(f) of the Commission's rules? Carriers will not have an end user associated with a number in any of these categories of numbers. For example, an intermediate number is a number that is ''made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer.'' Should the receiving provider be responsible for including the number as an Assessable Number only when it provides the number to an end user? We seek comment on whether a numbers-based approach should assess Reserved Numbers. Would it be consistent with the ''equitable and non-discriminatory'' language in section 254(d) to exclude these numbers? Would the exclusion of available but not assigned numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into the category of ''reserved numbers.''

225. *Assigned but Non-Working Numbers.* The 2008 proposals sought comment on excluding non-working telephone numbers from the definition of Assessable Number. Several commenters supported the Commission's proposal that assigned but non-working numbers should be excluded from contributions. Carriers report as assigned numbers for NRUF purposes entire codes or blocks of numbers dedicated to specific end-user customers if at least fifty percent of the numbers in the code or block are working in the PSTN. Would it be consistent with the definition of an Assessable Numbers above for carriers to exclude the non-working numbers in these blocks in their Assessable Number counts, because the non-working numbers portion of these blocks are not ''in use by an end user''? We seek to update the record on whether a numbers-based approach, if adopted, should assess non-working numbers. Would it be consistent with the ''equitable and non-discriminatory'' language in section 254(d) to exclude these numbers? Would the exclusion of non-working numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? Would this create loopholes and make it difficult for the Commission or USAC to audit a provider to determine if non-working numbers were properly counted? In the alternative, should such numbers be assessed at a pro-rated or reduced rate? We also seek comment on the count of non-working numbers, as well as the trend for this category.

226. *Numbers Used for Routing Purposes.* We seek to update the record on whether a NANP number used solely to route or forward calls should be excluded from the definition of Assessable Number in a numbers-based approach, if such routing number were provided for free, and such number routes calls only to Assessable Numbers. Should these numbers be assessed on a different basis, if such routing or forwarding were provided for a fee, such as with remote call forward service or foreign exchange service? We seek comment on whether such numbers should be excluded under a numbers-based contribution system. Would it be consistent with the ''equitable and non-discriminatory'' language in section 254(d) to exclude these numbers? Would the exclusion of numbers used for routing purposes have a material impact on the contribution base and associated per month charge for assessable numbers? How would the exclusion of routing numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We also seek data on numbers used for routing purposes, including trend information for this category of numbers.

227. *Toll-Free Numbers.* We seek comment on whether a numbers-based methodology should make special accommodations for toll-free numbers. We seek comment on whether the proposed definition for assessable number should exclude from assessment toll-free numbers. Would it be consistent with the ''equitable and discriminatory language'' in section 254(d) to exclude these numbers? How would the exclusion of toll-free numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We also seek data on toll-free numbers, including trend information for this category of numbers.

228. *All Public or Private Interstate Networks.* As more services migrate to alternative networks that only partially traverse the PSTN, we seek comment on whether there is a danger that a NANP numbers-based contributions methodology in time could result in declines in the base, and may conflict with our proposed reform goals of ensuring sustainability in the Fund and promoting fairness in the USF contribution assessment system? Or are NANP numbers being used in association with new technologies that do not originate or terminate on the PSTN? If so, do commenters expect that growth in these alternative usages will outpace other declines? We seek comment generally on whether a contribution system based on NANP numbers would be sustainable as the marketplace evolves in the future.

229. *Numbers Provided to End Users.* We seek comment on which providers should contribute to the Fund under a numbers-based contribution methodology. We seek comment on whether the provider with the retail relationship with the end user should have the contribution obligation under a numbers-based approach. Would such a provider have the most accurate and up-to-date information about how many Assessable Numbers it currently has assigned to end users and how many are in use? If we adopt a different approach for numbers used for consumer versus enterprise services, would the provider with the retail relationship be in the best position to distinguish consumer users from business users?

230. We seek comment on how a numbers-based approach should be implemented with respect to wholesalers, resellers, and other providers incorporating NANP numbers into retail services. Would a system that assesses only numbers provided to end-users invite problems similar to those that exist today under the current revenues-based system, whereby some providers do not contribute for services provided? We note that in some instances wholesalers may provide telecommunications services to customers with numbers. For example, would a numbers-based system create wholesale/reseller/retailer problems of the type discussed earlier in this Notice?

c. Trends in Numbers

231. We seek comment and data on the count of numbers that would be assessable under a number-based USF contribution assessment system. Neustar, the administrator of the NANP, estimates that there are currently 770 million numbers in active use in the United States. As shown in Chart 7 below, one projection suggests there could be over 832 million numbers in active use by 2015. We seek comment on this estimate and the underlying assumptions, and invite commenters to present their own estimates for the growth or decline in the count of actively-used numbers as well as any additional data regarding their own estimates and the key drivers for such growth or decline. To what extent is the growth in the volume of numbers due to new services and applications, and to what extent is it due to greater penetration of phone service, such as cell phone family plans and usage by younger children? Do commenters believe the volume of numbers will increase in the foreseeable future? Is the growth trend sustainable given anticipated technology changes? What other factors will impact the continued growth in the volume of numbers? What impact would the growth in numbers have on future contribution assessments? To the extent commenters predict the volume of numbers in use will decline over time rather than grow, they should similarly identify the basis for their assumptions and describe in detail their projections for the foreseeable future. What challenges would a numbers-based contribution system face if the volume of numbers were to shrink?

232. We seek to update the record on what the per-number charge would be, given current and projected trends in numbers and overall universal service demand. Commenters also should provide revised estimates of the impact on different industry contributors, and residential and business consumers, in light of current marketplace developments. Commenters should indicate which definition of ''assessable numbers'' (and exclusions from assessable numbers) they use in their projections.

d. Differential Treatment of Certain Types of Numbers

233. We seek comment on whether to provide differential treatment or exclude altogether certain types of numbers from the definition of Assessable Numbers under a numbers-based contribution methodology, and whether doing so would further or undermine our proposed goals for contributions reform. To the extent commenters contend certain types of numbers should be assessed at a different rate, *i.e.* a percentage of the basic per number assessment per month, we ask commenters to include a policy rationale for their proposal. Is there a reason why certain types of numbers should be assessed at some fraction, such as 33 or 50 percent, of other numbers based on usage? Would assessing numbers used for certain types of services promote or discourage innovation?

234. *Family Plan Numbers.* Parties have argued in the past that telephone numbers assigned to the additional handsets in family wireless plans should be assessed at a reduced rate, either permanently or for a transitional period. These commenters suggested that assessing contributions at the full per-number rate would cause family plan customers to experience ''rate shock.'' We seek to refresh the record on this issue. We seek comment on whether a numbers-based approach should count equally all numbers that are used for family plans. If we were to adopt a differentiated approach for family plans, how would we define a ''family plan'' that would be subject to such differential treatment? Would this create incentives for service providers to consolidate accounts and take other measures to characterize service offerings as ''family plans''? Would such a rule be limited to mass market consumers, and if so, how should we distinguish between mass market plans and enterprise plans? Would differential treatment of such numbers satisfy the statutory requirements that contributions by telecommunications service providers be equitable and non-discriminatory? What would be the policy justifications for assessing such numbers at a pro-rated or reduced rate? We ask commenters to provide data with underlying assumptions as to the count of numbers that would fall into this category, specifically, how many phone numbers are associated with a primary phone number in a family plan.

235. *Services-Based Exceptions.* Prior commenters have proposed that we should exempt from any numbers-based contribution methodology services provided by telematics providers, one-way service providers, two-way paging services, and alarm companies. We seek to update the record on these proposals, noting that since 2008, additional marketplace developments have emerged that may similarly not fit neatly into the numbers paradigm, including numbers assigned to devices reliant on mobile broadband, such as data cards, e-readers, and tablet computers. Should these types of numbers be assessed at a different rate, *e.g.,* a percentage of the basic per number monthly assessment? Should a number assigned to a telematics device, where the customer is not paying a monthly fee and the device can only make a ''call'' in an emergency situation be assessed differently from a number assigned to a consumer cell phone or a business landline? Would exclusion of numbers associated with such services be consistent with the statutory requirement that all carriers providing interstate telecommunications services shall contribute on an equitable and non-discriminatory basis? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers altogether from contribution obligations? We ask commenters to provide data as to the volume of numbers that would fall into this category.

236. *Numbers Provided to Lifeline Subscribers.* We seek comment on whether the Commission has statutory authority to exclude numbers associated with service offerings provided to Lifeline subscribers, given the

mandatory contribution obligation for telecommunications service providers. To the extent such numbers are provided with telecommunications services, would it be consistent with our section 10 authority to forebear from imposing contribution obligations on such numbers?

237. We seek to update the record on whether it is appropriate to not assess numbers for Lifeline subscribers, if we were to adopt a numbers-based contribution methodology. We note that today there are approximately 14.8 million Lifeline subscribers. How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Alternatively, should such numbers associated with Lifeline services be assessed at a pro-rated or reduced rate, and if so, what would be an appropriate amount?

238. *Free Services.* We seek to refresh the record on whether services offered on a free, or nearly-free basis should be excluded in a numbers-based system. Since commercial providers of free or nearly-free services generate revenue in other ways, such as through advertising or through more sophisticated paid service offerings or product offerings, should they be exempt from contribution obligations? We ask commenters to provide estimates with supporting data regarding the number of numbers that would fall into this category.

239. *Community Voice Mail.* We seek comment on whether a numbers-based approach should assess numbers associated with services such as community voicemail. Would exclusion of these numbers satisfy the statutory requirements for universal service contributions from providers of telecommunications services? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into this category.

240. *TRS and VRS Numbers.* We seek to update the record on whether we should exempt Internet-based telecommunications relay services (TRS), including video relay services (VRS) and IP Relay services. Such services are provided for free to people with hearing and speech disabilities, under Congressional mandate. Would inclusion of these numbers satisfy the statutory requirements for universal service contributions? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into this category.

241. *Other Exemptions.* Are there other types of numbers or services that should be excluded from a numbers-based contribution mechanism, if we were to adopt such an approach? For instance, should we adopt exemptions for numbers used by non-profit health care providers, libraries, colleges and universities, entities that typically administer their own numbers? Would inclusion of these numbers satisfy the statutory requirements for universal service contributions? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into each category of proposed exemptions.

e. Use of a Hybrid System With a Numbers-Component

242. We seek specific comment on adopting a hybrid numbers-connections based methodology. The Commission sought comment in 2008 proposals on two hybrid approaches in which consumer numbers would be assessed on a numbers-based methodology, and business lines would be assessed on a connections-based methodology. The Commission has also sought comment on a hybrid numbers-connections methodology that would assess providers a flat fee for each assessable NANP telephone number and assess services not associated with a telephone number as connections. A hybrid numbers and connections system may have advantages over a numbers-only system insofar as it captures services that are provided without numbers. In other respects, however, such a system might incorporate all of the potential disadvantages of both numbers-based and connections-based systems. Moreover, regardless of the particular methodologies used, hybrid systems may be more complex and expensive to administer than a single system. Should carriers that do not have working numbers or end-user connections continue to contribute based on their interstate telecommunications revenues? We ask parties to refresh the record and seek comment on this analysis.

243. To what extent would a hybrid system create competitive distortions in the marketplace? Any system that would make distinctions between mass market and enterprise users would require an ability for contributors in the first instance, and USAC and this Commission, to distinguish between the two, in order to ensure that contributions are appropriately made. Would such a system advance our proposed reform goals of administrative efficiency, fairness and sustainability? Would a hybrid system satisfy the statutory requirements that contributions be equitable and non-discriminatory? Would using a different methodology for contributions for the provision of service to businesses dissuade investment in higher speed and robust communications facilities? Recognizing that the answer may depend on the specific tiers that are adopted, and the assessment levels for each tier, would such a system, potentially, unfairly advantage or disadvantage purchasers of higher speed connections?

244. Commenters who support a numbers-connections methodology should address the feasibility of the methodology in light of recent industry developments and the continuing evolution of telecommunications technology. Commenters should also address the advantages and disadvantages of such a system. Are there any entities that would be contributing for the first time, if we were to adopt a hybrid approach? We specifically seek comment on whether a hybrid numbers-connections methodology would better meet our goals for reform in comparison to the options discussed above, including an improved revenues system, a connections-based approach, and a numbers-based contribution assessment system. We ask parties claiming significant costs or benefits of a hybrid approach to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

f. Policy Arguments Related to Numbers-Based Assessment

245. We seek to refresh the record on the potential benefits of a numbers-based contribution methodology. We also seek comment on whether a numbers-based system (compared to a connections-based system or the current revenues-based system) would be simpler to understand. Would it be competitively neutral? Would a

numbers methodology be inequitable or discriminatory for low volume users? Would a numbers-based system, be easier to audit for compliance? Could such a system reduce compliance costs for contributors? Could it also reduce marketplace distortions that may be present in either the consumer or enterprise markets? We ask parties claiming significant costs or benefits of a numbers-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

246. Are there modifications that could be made to a numbers-based methodology to make assessment fairer to consumers on low-cost service plans? Would a numbers-based system shift the universal service contributions from higher-volume users of communications services to lower-volume users? Overall, would low-income households pay a larger percentage of communications bills in contribution assessments than higher income households compared to today?

247. Would adoption of a numbers-based contribution approach discourage the emergence of innovative new functions and services, such as ''follow-me'' services or unified communications applications? If the Commission were to adopt a numbers-based contribution methodology, how could it structure such a system so as not to inhibit innovation? For example, should the Commission exempt numbers associated with certain services to be exempt for a defined period of time, analogous to the Commission's pioneer's preference rules?

248. *Distinguishing Telecommunications from Non-Telecommunications.* Would a numbers-based methodology more easily accommodate new services and technologies without requiring service providers or the Commission to make service classification judgments? We seek comment on approaches to provide clarity to contributors with respect to specific services, without the need to classify those services as either information services or telecommunications services. We also seek comment on assessing revenues associated with information services. In light of those potential approaches to determining who should contribute, would a numbers-based methodology continue to offer advantages as a relatively simple basis for assessing those providers' contributions? To what extent have numbers become increasingly associated with information services? Would a numbers-based assessment mechanism ensure that contribution obligations are applied in a fair and predictable manner to all interstate telecommunications providers?

249. *Jurisdictional Considerations.* The current revenues-based system requires contributors to separately report revenues derived from interstate, intrastate, and international services. We seek comment on whether a numbers-based system might mitigate the need to differentiate between interstate and intrastate jurisdiction.

250. Given that NANP numbers enable users to connect with other users across state lines, is it reasonable to conclude that a numbers-based methodology would be directed at interstate providers and therefore consistent with the statutory requirements of section 254? We seek specific comment on the implications of the Fifth Circuit's *TOPUC* decision, which held that section 2(b) of the Act prohibits the Commission from assessing revenues associated with intrastate telecommunications service. Does *TOPUC* impose any limitations on a numbers-based contribution system, particularly in light of the Commission's authority over numbering in section 251? We also seek comment on whether *TOPUC* raises any concerns related to assessing international services. If so, we seek comment on whether a numbers-based system should include an exemption similar to the limited international revenues exemption under the current revenues-based system for providers that are primarily international in nature, and if so, how such an exemption should be crafted.

g. Implementation

251. Implementing a numbers-based system would require revised data collection and reporting requirements. In this section, we seek comment on how the Commission would transition to a numbers-based system. We also ask whether adopting a numbers-based system would increase compliance burdens if states that administer their own universal service programs continue to employ revenues-based assessments.

252. *Reporting of Numbers.* We seek comment on how a numbers-based system should be implemented and the transition process, should we adopt such a system. In particular, we seek comment on the specific changes necessary to enable USAC to collect contributions under a numbers-based system. How would contributors report the assessable numbers (and potentially speed or capacity under a numbers-connection hybrid system) under a numbers-based assessment methodology? Should we continue to use a FCC Form 499 (with changes), leverage the existing NRUF reporting requirements, or develop a completely new data collection? What would be the administrative impact of a new reporting system on providers and on USAC as the administrator of the Fund? If the Commission were to adopt a numbers-based methodology, should contributors be required to report assessable numbers on a monthly basis, quarterly basis, or some other period? Should we retain the same quarterly and annual true up reporting periods for a numbers-based system? Would a monthly reporting requirement create a burden that is not outweighed by the simplification posed by a numbers-based system? Should the information be reported as actual numbers, forecasted numbers, or historical numbers? Would historical reporting unnecessarily complicate the numbers reporting system? Is there any information that would be particularly difficult to report on a monthly basis? Would a more frequent reporting period be less likely to require adjustments to the contributions requirements? Would longer or shorter reporting intervals advantage or disadvantage some types of providers more than others?

253. *Costs Associated With Implementing a Numbers System.* We seek comment on what out-of-pocket costs contributors would incur to implement a new numbers-based contribution methodology, both in the short term to transition to a new system and on an annual basis once a new system is in place. Commenters should explain the categories of costs that would be incurred. To the extent possible, commenters should quantify these costs and indicate how they compare to the costs of complying with the existing revenues-based system. Would contributors be able to use their current billing and operating systems to report numbers for universal service contributions? If not, what would be the incremental costs associated with modifying billing systems and internal controls and processes to collect and track numbers for purposes of reporting and contributing to the Fund? Would contributors have to implement entirely new systems to track the type of data needed to report assessable numbers? Are there cost savings that could be realized by moving away from the current revenues-based system, which requires contributors to report revenues quarterly (projected) and annually (actual) for USF purposes, and potential efficiencies based on other existing number reporting requirements for other

regulatory requirements? Would those costs vary depending on the definition of assessable numbers? We also seek comment on whether the cost of updating billing and internal systems for this narrow regulatory purpose would outweigh any benefit achieved. Would increased operational costs of moving to a numbers system negatively impact certain carriers as compared to other carriers? Commenters should provide data on any such increased costs.

254. We also seek comment and data on other costs associated with a numbers-based system, and in particular ask providers if there are any costs that are not discussed above. Would the cost of moving to a new numbers system be relatively greater for certain classes of customers or certain industry segments? To what extent would this analysis change depending on how ''assessable numbers'' is defined and assessed? Do the additional costs associated with implementation and the reporting requirements outlined below outweigh the benefits of moving to a numbers-based methodology?

255. *Auditing.* We seek comment on how to define an ''Assessable Number'' to make it easier to audit to ensure that contributors are reporting accurately, and that the system operates in an equitable and nondiscriminatory manner, maintains stability in the contribution base, and minimizes market distortions and gamesmanship. We seek comment on whether we should allow carriers to self-certify which numbers are assessable numbers for contributions purposes. We also seek comment on whether we should modify the current recordkeeping requirements to further improve the auditing process for both contributors and auditors. Should we adopt additional rules or provide further guidance regarding the types of records and supporting documentation that should be maintained? Proponents of a numbers-based system should provide specific details about how contributors would report their data and how auditors could verify the accuracy of assessable numbers reported.

256. *Effect on Other Programs.* We ask parties to provide comment on the impact of moving to a numbers-based approach on the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs. We ask parties to provide comment on the best approach for ensuring proper funding of these programs were we to move to a numbers-based methodology. Should contributors continue reporting gross billed end-user revenues for purposes of these programs, and if so, should they continue to report on an annual basis? Should we simplify the Form 499 for purposes of revenue reporting in that instance? Are there alternative ways to calculate contributions for these programs?

257. *Transition.* A numbers-based methodology would constitute a change from the current revenue-based system and would likely require a transition period, especially if reporting entities need to implement new billing and accounting systems and a process for recording number counts in a manner that is auditable. We seek to refresh the record on whether a 12-month period would give contributors sufficient time to adjust their record-keeping and reporting systems so that they may comply with modified reporting procedures. Could such a transition be implemented within a given calendar year, and if so, should it be tied in some fashion to the current quarterly filing of Form 499–Q? We seek comment on what steps would need to be taken to transition between the current revenues-based system and a numbers-based system and how much time would be needed to ensure that the new process is applied in an equitable manner. Commenters should indicate whether the other changes discussed in this Notice would require less or more time to implement.

258. Is a 12-month transition period sufficient to ensure that all affected parties would have adequate time to address any implementation issues that arise? How much time would be necessary for contributors, including new contributors, to adjust their record-keeping and reporting systems in order to comply with new reporting procedures? Are there considerations that would favor a longer or shorter transition period? Would there be a benefit in adopting different transitional periods for residential and business markets?

259. We also seek comment on requiring dual reporting during all or some of the transition time—where reporting entities would continue to report and pay under the current revenues-based system, while they also begin reporting under the new system. Would having providers report under both systems for a specified amount of time during the transition provide the opportunity for both providers and USAC to address unforeseen implementation issues that are likely to arise under the new reporting system? Should new filers begin reporting sooner since USAC does not have any historical data on their revenues and services?

C. Improving the Administration of the Contribution System

260. We seek comment on potential rule changes that could be implemented to provide greater transparency and clarity regarding contribution obligations, reduce costs associated with administering the contribution system, and improve the operation and administration of the contributions system. For each issue, we seek comment on whether and how the potential rule change could or should be implemented on an accelerated timetable, in advance of other reforms under consideration in this proceeding, as well as the potential reduction in compliance costs associated with adopting each proposal.

261. We request clear and specific comments on the type and magnitude of likely benefits and costs of each of the rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how data were calculated and identification all underlying assumptions.

1. Updating the Telecommunications Reporting Worksheet

262. We seek comment on whether we should modify the process by which the Telecommunications Reporting Worksheets (FCC Forms 499–A and 499–Q) are revised by soliciting public comment from interested parties prior to adopting revisions to the Telecommunications Reporting Worksheet and instructions. We also seek comment on whether to adopt a rule specifying that the worksheets and instructions constitute binding agency requirements.

263. We propose to adopt a formalized annual process for the Bureau to update and adopt the Telecommunications Reporting Worksheets and their accompanying instructions. We propose to amend § 54.711 to include the following proposed rule: *Telecommunications Reporting Worksheet Revisions. The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.* Adopting such a rule would respond to requests in the record asking that parties be given prior notice of any proposed revisions to

the worksheet instructions, and an opportunity to comment on such revisions. If the Bureau were to put instructions out for public comment before they are adopted, at what point in the calendar year should the Bureau place the proposed form and instructions on public notice, and when should it be required to issue the revised form and instructions? Would this proposed rule change support our proposed reform goals of fairness and simplifying compliance and administration? Parties are encouraged to provide information and data addressing how such a rule would simplify compliance and administration.

264. In particular, we seek comment on whether releasing the form after the calendar year is over makes it more difficult for contributors to track the information that must be reported for the prior year in a manner consistent with the prescribed format. If so, commenters should provide specific examples of such burden, and quantify such examples with data.

265. Should the Commission specify that contributors are required to comply with the Form 499 instructions adopted pursuant to such a process? Should the Bureau have delegated authority to make changes to the Form and related instructions to the extent that they constitute binding requirements, and if so, what should be the scope of its authority?

266. If we do not adopt an annual process for publicizing the updated form, should we require the Bureau to set out for comment the proposed revisions to the Telecommunications Reporting Worksheets and accompanying instructions before implementation of any significant changes resulting from the reforms identified in this Notice? What is the most efficient way to seek public input on how to implement these changes in a straightforward and readable manner so that all reporting entities can know their obligations and comply with our rules?

2. Revising the Frequency of Adjustments to the Contribution Factor

267. If the Commission continues a revenues-based system or alternative system that will use a contribution factor, we seek comment on modifying the frequency of changes to the contribution factor. Presently, the contribution factor is revised on a quarterly basis. We seek comment on revising the contribution factor less frequently, such as annually. We seek comment on whether we should revise our rules, for example, to use reserves, to the extent necessary, to meet any quarterly fluctuation in demand. Would such a method better serve our proposed reform goals of increasing efficiency, fairness, and sustainability of the Fund? If we were to adopt a rule requiring annual adjustments to the contribution factor, should we wait to implement such a rule until 2013, when the Commission expects to have the information needed to be in the position to determine an appropriate budget for the Lifeline program?

268. Would adjusting the contribution factor on an annual basis advance our proposed reform goals of increasing administrative efficiency, fairness and sustainability? Does the fluctuation in the contribution factor create revenue reporting difficulties for stakeholders? Does it cause difficulties in marketing services to consumers? Does the fluctuation from one quarter to the next in the contribution factor make it difficult for contributors to anticipate their likely contribution obligations for the year, or for end-user customers to forecast the total cost of their communications packages, including any universal service pass through charges? To the extent there are reasons to adjust the factor more often than annually, would it be an improvement to the current system to make such adjustments every six months?

269. Another option to reduce fluctuations in the contribution factor caused by prior period adjustments is to extend the period of time during which such prior period adjustments are taken into account for subsequent adjustments to the contribution factor. For example, we could require that prior period adjustments be leveled out over a period of two subsequent quarters under a rule that provides as follows: *If the contributions received by the Administrator in a quarter exceed or are inadequate to meet the actual expenses for that quarter, the Administrator shall adjust its projected expenses for the following two quarters to account for the excess or inadequate payments (and any associated costs) unless instructed to do otherwise by the Commission. The contribution factor for the following two quarters will take into consideration the projected costs of the support mechanism for those two quarters, and the excess or insufficient contributions carried over from the previous quarter.*

270. We seek comment on whether accounting for prior-period adjustments over a longer period, such as two quarters rather than one, could reduce the amount and severity of the fluctuation in the contribution factor from one period to the next. By providing USAC with more than one quarter to account for these adjustments, the increases and decreases may help to offset each other, and thereby reduce the period to period fluctuations in the contribution factor.

271. We seek comment on the merits and technical aspects of a rule change to address quarter to quarter fluctuations in the contribution factor. What would be the benefits of modifying our rules as discussed above, and would such a change have any negative or positive impact on administration of the Fund? What are the potential unintended consequences of extending the period of time during which prior period adjustments are taken into account? Would authorizing USAC to make prior period adjustments over an even longer period be appropriate, and if so, over how many quarters? If we were to move to an alternative to the current revenue-based system, should we similarly direct USAC to account for any fluctuations in demand over a period of time longer than one quarter in order to minimize quarterly variation in the contribution obligation associated with the assessable unit of measure?

3. Pay-and-Dispute Policy

272. We propose to adopt either as Commission policy or a codified rule the current USAC practice commonly referred to as the ''pay-and-dispute'' policy. This policy requires contributors that wish to challenge a USAC invoice to keep their accounts current while disputing the amounts billed in order to avoid late fees, interest, and penalties. We seek comment on whether adopting ''pay-and–dispute'' as a policy or rule supports our proposed reform goals, including ensuring predictability and sustainability of the Fund, simplifying compliance and administration, and fairness.

273. We propose to amend § 54.713 of our rules to adopt a pay-and-dispute rule as follows: *If a universal service fund contributor fails to make full payment of the monthly amount established by the contributor's applicable Form 499–A or Form 499–Q, or the monthly invoice provided by the Administrator, on or before the date due, the payment is delinquent. Late fees, interest charges, and penalties for failure to remit any payment by the date due shall apply regardless of whether the obligation to pay that amount is appealed or otherwise disputed unless the Administrator or the Commission (pursuant to § 54.719) finds the disputed charges are the result of clear error by the Administrator.*

274. Although the Bureau has consistently upheld USAC's

implementation of the pay-and-dispute requirement, contributors continue to challenge USAC's use of the pay-and-dispute requirement in specific instances by withholding payment pending resolution of a disputed charge. Adopting as a Commission policy or rule or, at a minimum, affirming the pay-and-dispute requirement could lessen administrative burdens for both USAC and Commission staff, while also putting all contributors on notice of the procedures for appealing contested invoices. We seek comment on whether adopting the pay-and-dispute requirement serves our proposed reform goals. We specifically seek other proposals that create the proper incentive for contributors to pay their invoices in a timely manner. We seek comment on whether adopting USAC's pay-and-dispute requirement is consistent with the Commission's DCIA rules. We also seek comment on any other changes to our rules that would ensure better compliance with our rules and the Debt Collection Improvement Act.

4. Oversight and Accountability

275. We seek comment on various issues relating to oversight and accountability for the contributions system. To ensure that data actually reported closely approaches our best estimate of industry-wide assessable services, should we establish a performance goal of reducing the number of contributors that do not satisfy their contributions obligations? If so, what information should we rely upon to track that goal?

276. USAC employs several practices to identify entities that should register and contribute to the Fund. For example, during contributor audits, USAC obtains a list of resellers from the auditee and identifies companies that have not registered. USAC contacts these companies to determine why they are not registered or contributing to the Fund. USAC also contacts companies that it independently identifies from industry news sources and whistleblowers. We seek comment on additional steps that could be taken to identify those telecommunications providers that are not meeting their contribution requirements. What measures could the Commission direct USAC to take to ensure industry-wide compliance with our contribution rules?

277. We seek comment on the extent to which potential rule changes that could simplify the contribution system discussed in this Notice could help ensure that contribution assessments are made and collected in accordance with Commission rules and requirements. Further, we seek comment on how we could measure the benefits of simplification in the contribution system. What information would we need, and what would be an appropriate performance goal?

278. *USAC Audits.* We seek comment on processes and procedures that USAC could implement to make the contributor audit process more efficient. We seek public comment on how to most efficiently use our administrative resources to ensure that contributions are made in accordance with the Commission's rules and requirements, while minimizing compliance burden on companies subject to audit. We seek comment on whether we should require USAC to produce an updated audit plan for OMD and the Bureau for USF contribution purposes. How many audits should USAC initiate (at a minimum) each year? How should USAC ensure that audits encompass a representative sample of the industry?

279. *Timely and Efficient Reporting.* We seek comment on whether we should adopt as a performance goal that a specified percentage of reporting entities file their Worksheets on time. We seek comment on what additional outreach and training USAC may need to do to encourage more reporting entities to file their Worksheets on time and electronically. We also seek comment on any revisions to our rules that would create the proper incentives for timely filing. We seek comment on this analysis and the time frame in which we should implement and monitor our progress towards meeting such a goal, if adopted.

280. *Prompt Payment and Collection of Contribution Obligations.* We seek comment on adopting several performance goals related to that task. First, we seek comment on adopting a performance goal of decreasing the aggregate number and dollar amount of delinquent contributions payments. Second, we seek comment on adopting performance goals of reducing the percentage of contributors that are delinquent in payments, the percentage of contributors delinquent more than 30 days, and the percentage of contributors delinquent more than 90 days. We seek comment on these performance goals and also on the specific targets that USAC and the Commission should strive to reach. We seek comment on what additional outreach and training USAC may need to do to encourage more contributors to pay their debts on time, and whether any revisions to our rules would encourage timely payment. We seek comment on what allowances we can and should make in consideration of any economic conditions impacting the industry.

281. We seek comment on whether these measures would assist the Commission with monitoring either the costs of compliance for contributors or the contributions burden on consumers and businesses, especially when coupled with other proposals in this Notice. We seek specific comment on whether any particular reforms identified in this Notice would help or hinder oversight over the contribution system. We also invite parties to suggest additional or alternative goals and measures for assessing the performance of the contribution system.

5. Paper-Filing Fees

282. We propose to adopt a filing fee for contributors that choose to submit the Telecommunications Reporting Worksheets by paper rather than electronically. In order to increase efficiency in program administrative, we propose to amend § 54.711 to require that reporting entities file the Telecommunications Reporting Worksheet electronically: *Electronic Filings. Reporting entities must file the Telecommunications Reporting Worksheet electronically. The Administrator shall assess a $25 fee on reporting entities for filing paper copies of the quarterly Telecommunications Reporting Worksheet. The Administrator shall assess a $50 fee on reporting entities for filing paper copies of the annual Telecommunications Reporting Worksheet. The Administrator shall not assess a paper-filing fee on reporting entities that electronically file their Telecommunications Reporting Worksheet, but such entities must also submit either a paper or electronic certification attesting to the accuracy of the information reported therein under penalty of perjury.*

283. Based on information provided by USAC, the proposed paper-filing fees would be set at a level so as to compensate the Fund for the additional costs incurred by USAC to manually process these paper filings and encourage more reporting entities to file electronically. We seek comment on this analysis.

284. We seek comment on the merits and technical aspects of a rule change assessing a paper filing fee. What is the potential impact on contributors and the Fund if we adopt a paper filing fee? We seek specific comment on setting the appropriate size of a paper filing fee so that reporting entities would have an appropriate incentive to file electronically and in a timely manner. We seek comment on any other changes

to our rules that would ensure better compliance with our rules and the Debt Collection Improvement Act. The above proposed rule requires electronic filers to submit either a paper or electronic certification attesting the accuracy of the electronic filing. We seek comment on what procedures we should adopt to facilitate the certification to be done electronically, per the E–Sign Act. In addition, we seek comment on what modifications, if any, USAC should make to its electronic filing system to ensure that it is accessible to persons with disabilities. In lieu of imposing a filing fee, is there a different approach that would incent contributors to file electronically?

6. Filer Registration and Deregistration

285. We seek comment on tightening our registration requirements so that all telecommunications providers with FCC Form 499–A reporting obligations (whether they are common carriers or not) have the obligation to register within thirty days of commencing service. We propose to amend § 54.706 to include the following proposed rule: *(f) Registration Requirements. Every common carrier subject to the Communications Act of 1934, as amended, and every entity required to submit a Telecommunications Reporting Worksheet shall register with the Commission in accordance with the provisions of 47 CFR 64.1195(a) thru (c) and the Instructions to the Telecommunications Reporting Worksheet within thirty days of the commencement of provision of service.*

286. Deregistration Requirements. We also propose to require registered entities that no longer meet the requirements to register to file a deregistration with the Commission. A deregistration requirement could ensure that the Commission's Form 499 Filer Database is current and complete. Currently, if a contributor has previously filed a Form 499–A or Form 499–Q, but has not notified USAC that it no longer providers telecommunicates services, USAC estimates the provider's quarterly revenues and sends an invoice to that provider for its estimated contributions. This may create confusion and generate late fees for providers that no longer provide service. A formal deregistration requirement could streamline USAC's and the Commission's processes by eliminating unnecessary invoices and removing entities that no longer provide service from the Commission's database. We propose to amend § 54.706 to include the following proposed rule: *(g) Deregistration Requirements. If a registrant stops providing interstate and international telecommunications to others, it shall deregister with the Commission within thirty days of its last provision of telecommunications. To deregister, a registrant must comply with the Instructions to the Telecommunications Reporting Worksheet.*

287. Would adoption of such a rule simplify the process of billing contributors, and thereby lessen USAC's administrative costs? Would adoption of such a rule further other proposed reform goals?

288. *Wholesale-Reseller Confirmation Requirements.* We seek comment on adopting a value-added revenue system to address recurring USF contribution issues that arise in instances where wholesale carriers provide services to other carriers. To the extent that we do not adopt a value-added system, however, we seek comment on requiring all registrants that provide telecommunications to other carriers to check the registration status of their customers. We seek comment on whether imposing such an obligation could ''deter [registrants] from providing service to resellers that have not registered with the Commission, which will, in turn, make it more difficult for 'bad actor' resellers to stay in business.'' We propose to amend § 54.706 to include the following proposed rule: *Customer Confirmation Requirements. A telecommunications carrier or provider providing telecommunications to other carriers or providers shall have an affirmative duty to ascertain whether a customer that is required to register has in fact registered with the Commission prior to offering service to that customer.*

289. Would adoption of each of the above proposed rules increase the likelihood that all potential contributors register with the Commission and comply with universal service contribution reporting obligations? What are the costs and benefits of imposing such an obligation on FCC registrants, and how would that vary if the Commission adopts other rule changes discussed in this Notice? For instance, if the Commission were to require contributions from wholesalers, would that lessen the potential policy rationale for ensuring the reseller is registered with the Commission?

D. Recovery of Universal Service Contributions From End Users

290. We seek comment on issues relating to recovery of universal service contributions from customers. We request clear and specific comments on the type and magnitude of likely benefits and costs of each of the rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and identification of all underlying assumptions.

291. The statutory framework established by Congress in the Act governs the recovery of universal service contributions by telecommunications service providers. Although a contributor may generally recover its universal service contributions from its customers, the Commission has placed two restrictions on doing so. First, a ''federal universal service line-item charge'' may not ''exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.'' Second, eligible telecommunications carriers (ETCs) that are incumbent LECs may not pass through a federal universal service line-item charge to their Lifeline subscribers except to recover ''contribution costs associated with the provision of interstate telecommunications services that are not supported by the Commission's universal service mechanisms.'' In practice, this means that incumbent ETCs historically have not been permitted to pass through to Lifeline subscribers the contribution costs associated with the subscriber line charge (which is deemed 100 percent interstate), but they may pass through contribution costs associated with other interstate services, such as long distance calling. There is no comparable restriction for competitive ETCs that serve Lifeline subscribers.

1. Pass-Through of USF Contributions as Separate Line Item Charge

292. We seek comment on ways to improve transparency relating to the amount of universal service contribution charges that are being passed through by the carriers to their customers.

293. *Providing Clarity in Customer Bills.* Under today's system, the contribution factor is typically applied to only a fraction of the total end user revenues derived from a customer. Currently, § 54.712(a) only addresses line items on customer bills and does not address situations in which there is no billing relationship. Moreover, our rules do not require contributors to indicate how the universal service charge on a customer's bill is calculated. In many instances, customer bills include a line item for USF, but do not indicate the USF contribution factor used to determine such line item, or the portion of the bill to which the

contribution factor was applied. We seek comment on whether we should limit the flexibility currently afforded contributors in the recovery of universal service obligations or adopt measures to provide greater transparency regarding such recovery to enable consumers to make informed choices regarding their service. For example, we could adopt a rule that contributors must identify on the consumer bill the portion of the bill (whether based on revenues or another unit) that is subject to assessment. This could enable end users to determine whether they are being properly charged a USF pass-through charge. What modifications, if any, would we need to make to § 54.712 of the existing rules, which prohibits a carrier from charging more than the interstate portion of the bill times the relevant contribution factor.

294. We seek comment on the value of making the burden of the universal service contribution plain, and whether this can be obtained without distorting the pricing strategies of individual providers. Would it be possible to require that the advertised price include the universal service contribution, while allowing the continued publication of the universal service contribution as a line item in end-users' bills? What additional rules should the Commission adopt to provide clarity to customers regarding USF pass-through charges? How should these rules be enforced? What benefits to consumers and/or cost burden to providers would such rules result in?

295. *Advertising USF Charges.* Should we also mandate that carriers disclose at the time of initial service subscription the amount of the quoted rate or other assessable units that would be subject to assessment? Are there alternative approaches the Commission should take to ensure greater disclosure of such charges to customers in a way that advances price comparison and evaluation?

296. *Mass Market Customers vs. Business Customers.* If we were to adopt either of these rules, should the rule apply broadly to all customers, or be limited to mass market customers, who typically have less leverage than businesses, institutions and governmental entities that purchase communications services? If we were to adopt such a distinction, how should we define ''mass market'' for these purposes?

297. *Eliminating Line Items.* An alternative approach to the rules described above would be to limit carrier flexibility to recover their universal service contributions from end users through a line-item or ''surcharge'' on end-user bills. Under such an approach, while contributors would retain the flexibility to include the cost of contributing to the universal service fund in determining their overall rate structure, they would not be permitted to represent any line item on end-user customer bills as a federal universal service charge. For instance, § 54.712 of the Commission's rules, which currently specifies that line items may not exceed the assessable portion of the bill times the contribution factor, could be replaced with the following rule: *Federal universal service contribution costs may not be recovered by contributors as a separate line-item charge on a customer's bill.*

298. We seek comment on the relative advantages of any of these potential changes over our current rules regarding the recovery of universal service contributions. In particular, we invite commenters to address whether such rules would benefit consumers by requiring contributors to quote prices for their services that are subject to USF obligations. What cost/burdens would this impose on service providers, and how can such cost/burdens be mitigated? We additionally ask commenters to address whether such rules would result in bills that are simpler and easier to understand. We particularly seek comment from consumer groups on the benefits or disadvantages of such a rule. We also seek comment on whether a rule limiting the pass through of USF charges would unnecessarily reduce carriers' pricing flexibility, resulting in fewer options for consumers.

299. We seek comment on our authority to impose these constraints on contributors' recovery of universal service contributions from their customers. We seek comment on whether sections 4(i), 201, 202, and 254 of the Act, or other statutory provisions, provide sufficient authority to adopt these proposals. Could the Commission adopt such requirements pursuant to its authority to regulate common carrier billing practices under section 201(b) of the Act? Because sections 201 and 202 of the Act only apply to ''common carriers'' or ''telecommunications carriers,'' could the Commission make these rules applicable to the broader category of ''telecommunications providers'' under its authority to regulate universal service contribution obligations pursuant to section 254(d) of the Act?

300. We also ask commenters to address whether any of these rules would raise First Amendment or other constitutional concerns, and, if so, how we should address those concerns. Would such rules be consistent with the Commission's other policies and regulations, including the Commission's goals of promoting competition, deregulation, innovation, and universal service?

2. Segregation of USF Pass-Through Charges

301. When a telecommunications provider files bankruptcy, the funds collected by the provider from end-user customers to recover universal service contribution costs are often claimed as part of the bankruptcy estate for the benefit of all the carrier's creditors, rather than for the benefit of the Fund. From 2001 through 2011, the USF was unable to collect, due to provider bankruptcies, $80 million of the $90.7 million in funds that such providers had collected as universal service line items. The Fund collected the remaining $10.7 million through participation in the providers' bankruptcy cases, but only after significant delays and the expenditure of attorneys' fees.

302. We seek comment on whether we should take steps to ensure contributions are made by contributors that become insolvent. Should we adopt a rule specifying that telecommunications providers that impose line items on their customers for federal universal service contributions are acting on behalf of the Fund? Would such a codified rule strengthen the position of USAC and the Commission in bankruptcy proceedings?

303. One potential solution to this problem would be to amend § 54.712 of our rules to require contributors that recover their contribution obligation from end-users to segregate those end-user payments in dedicated trust accounts for the sole benefit of the USF. We seek comment on whether the Commission should adopt such a requirement, and the particulars of its implementation. Should we, for instance, require the account to be interest-bearing? Should we require that USAC have access to or be a co-signatory on each account? In the event of late payment, should we permit contributors to use the trust funds to pay interest, penalties and/or costs assessed against the contributor under our rules for late payment? How would such a requirement best be enforced? We also seek comment on alternative means of ensuring payment of contribution amounts to the Fund in cases of insolvency and financial distress, and their advantages and disadvantages.

3. Limiting Pass-Through of USF Charges to Lifeline Subscribers

304. We seek comment on rule changes to provide a more level playing field among incumbent ETCs and competitive ETCs regarding their recovery of universal service pass-through charges. In particular, we propose to extend the current rules that apply only to incumbent carriers by amending § 54.712 to prohibit competitive ETCs from recovering USF charges for Lifeline offerings from Lifeline subscribers as follows: *Lifeline Subscribers. Eligible telecommunications carriers covered by § 69.131 and § 69.158 are subject to the limitations on universal service end user charges set forth therein. All other eligible telecommunications carriers shall not recover federal universal service contribution costs from Lifeline services to Lifeline subscribers. This limitation does not apply to services to Lifeline subscribers that are not supported by Lifeline, such as per-minute or other additional charges beyond the service for which the customer receives Lifeline support.* Such a rule could offer an easily administrable bright-line rule: ETCs would be free to pass along contribution costs through a line-item (or prepaid charge in the case of prepaid cards or services) only if the Lifeline subscriber chooses to purchase additional services beyond the basic Lifeline service. We seek comment on this analysis.

305. Would it be appropriate to bar competitive ETCs from passing through universal service contribution costs associated with their basic Lifeline offering, comparable to the restriction that exists today for incumbent carriers? Would such a rule result in competitive ETCs reducing the number of minutes provided in a Lifeline offering? We note that competitive ETCs are not required to allocate their costs and tariff their basic local exchange service (as incumbent LECs generally must), and there may be no reliable way to determine whether a competitive ETC is effectively recovering the contribution costs associated with the eligible Lifeline service included in the package. How would the Commission treat Lifeline service offerings by competitive ETCs?

306. We seek to develop the record on carrier practices today regarding recovery of USF contribution costs for Lifeline offerings from Lifeline subscribers. We seek comment and data on the extent to which ETCs that offer prepaid services supported by the Lifeline program effectively recover from their Lifeline subscribers the cost of their universal service contributions associated with that Lifeline plan. Do they recover those costs by adjusting the number of minutes provided for the established Lifeline rate? Do competitive ETCs providers that have monthly billing arrangements with Lifeline subscribers pass through USF contribution costs for Lifeline offerings?

307. We seek comment on the potential impact of a rule prohibiting recovery of contribution costs for Lifeline offerings on Lifeline service providers and their Lifeline subscribers. Given the Commission's steps in the last decade to increase telephone penetration on Tribal lands via the low-income program, we are particularly interested in comment from Tribal governments and Tribally-owned and operated Lifeline service providers on the impact of such a rule on Tribal lands and their Lifeline subscribers. Commenters that oppose such a rule should provide specific alternative rules and explain how their proposals would support the goals of universal service.

308. We seek comment on whether we need to update our rules applicable to both incumbent and competitive ETCs in light of the emergence of Lifeline offerings that may permit the Lifeline subscriber to make calls across state lines as well as within the state. For instance, should we adopt a rule that expressly prohibits all ETCs from recovering any contribution costs associated with a Lifeline offering that provides all-distance calling from their Lifeline subscriber?

309. Finally, we also seek comment on the impact on low-income subscribers generally, i.e., those subscribers that would be eligible for Lifeline, even if they do not participate in the program, of the different contribution methodologies discussed in above. What is the average amount of USF pass-through charge imposed and collected today for low-income consumers?

II. Procedural Matters

A. Ex Parte Presentations

310. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format *(e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Analysis

311. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

312. In the Notice, we seek public comment on approaches to reform and modernize how Universal Service Fund (USF or Fund) contributions are assessed and recovered. We seek comment on ways to reform the USF

contribution system in an effort to promote efficiency, fairness, and sustainability. We seek comment in four key areas regarding the contributions system: (1) Who should contribute to the Fund; (2) how contributions should be assessed; (3) how the administration of the contribution system can be improved; and (4) recovery of universal service contributions from consumers.

313. First, we seek comment on who should contribute to the Fund. Specifically, we seek comment on how we could exercise our permissive authority to define what services or providers should be subject to contribution obligations, either by: (1) Clarifying or modifying on a service-by-service basis whether particular services or providers are required to contribute to the Fund; or (2) adopting a more general rule that would specify which interstate telecommunications providers must contribute without enumerating the specific services subject to assessment.

314. Second, we seek comment on how contributions should be assessed. In particular, what methodology we should use to determine the relative contribution obligation among those providers who are required to contribute. In particular, we seek to refresh the record and update proposals to assess based on revenues, connections, numbers, or a hybrid approach. For each alternative, we ask parties to address the current and projected impact on the relative contribution burden for consumers and businesses in light of marketplace trends.

315. Third, we seek comment on how to improve the administration of the contribution system. We seek comment on potential rule changes that could be implemented to provide greater transparency and clarity regarding contribution obligations, reduce costs of administering the program, and improve the operation and administration of the program. Specifically, we seek comment on potential rule changes in six areas that should improve administration: (1) Updating the Telecommunications Reporting Worksheet and its instructions; (2) revising the frequency of adjustments to the contribution factor; (3) codifying the pay-and-dispute policy; (4) improving oversight and accountability; (5) mandating electronic filing of the Telecommunications Reporting Worksheet with a fee for paper filer; and (6) implementing a filer registration and deregistration requirement for all parties required to file the Telecommunications Reporting Worksheet.

316. Finally, we seek comment on whether the Commission could promote fairness and transparency by modifying the methods by which providers recover the costs of universal contributions from consumers. Specifically, we seek comment on the following questions: (1) whether to limit the flexibility of contributors to pass through contribution costs as a separately stated line item on customer bills; (2) whether to implement measures to ensure contributions are made by contributors that become insolvent; and (3) whether to prohibit competitive carriers from recovering universal service contributions for Lifeline offerings from Lifeline subscribers.

2. Legal Basis

317. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 4(j), 201, 202, 218–220, 254, and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

318. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

319. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category, that operated for the entire year. Of this total, 3144 firms employed 999 or fewer employees, and 44 firms employed 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to the Notice.

320. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

321. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

322. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

323. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard

specifically for these service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of these 72 carriers, an estimated 70 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Notice.

324. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Notice.

325. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The closest applicable size standard under SBA rules is for Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 providers have reported that they are engaged in the provision of prepaid calling cards. Of these providers, an estimated 193, or all such providers, have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

326. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

327. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Notice.

328. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by rules adopted pursuant to the Notice.

329. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the Notice.

330. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that the majority of Other Toll Carriers are small entities that may be affected by the rules adopted pursuant to the Notice.

331. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll-free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to this data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll-free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers;

4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

2. Wireless Telecommunications Service Providers

332. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms employed 999 or fewer employees and 15 employed 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small entities that may be affected by the rules adopted pursuant to the Notice.

333. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

334. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won two licenses.

335. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

336. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order, 64 FR 33762, June 4, 1999,* the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by rules adopted pursuant to the Notice. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses.

A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

337. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Notice.

338. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and nine EAG licenses. Fourteen companies claiming small business status won 158 licenses.

339. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

340. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

341. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

342. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with

attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won four licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

343. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to the Notice.

344. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: Five EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of five licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

345. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

346. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

347. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order* , we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

348. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular

Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

349. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

350. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

351. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by rules proposed in the Notice.

352. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Notice.

353. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Notice.

354. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by rules adopted pursuant to the Notice. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

355. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

356. *39 GHz Service.* The Commission created a special small business size

standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Notice.

357. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

358. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

359. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

360. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

361. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

362. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard of ''Cellular and Other Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

363. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

3. International Service Providers

364. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

365. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other

establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Notice.

366. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

4. Cable and OVS Operators

367. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Notice.

368. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers. Thus, under this second size standard, most cable systems have 10,000—19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice.

369. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

370. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms employed 999 or fewer employees, and 16 firms employed 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

5. Internet Service Providers

371. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard of 1,500 or fewer employees. According to Census Bureau data from 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to this Notice.

6. Other Internet-Related Entities

372. *Internet Publishing and Broadcasting and Web Search Portals.*

Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms employed 499 or fewer employees, and 23 firms employed 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

373. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

374. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Notice.

7. Other Entities

375. *Responsible Organizations (RespOrgs).* Toll-free numbers are assigned on a first-come, first-served basis by entities referred to as ''Responsible Organizations'' or ''RespOrgs.'' These entities, which may or may not be telephone companies, have access to the SMS/800 database, which contains information regarding the status of all toll-free numbers. RespOrgs are certified by the SMS/800 database administrator, which manages toll-free service. Most RespOrgs are telephone carriers or companies. Other companies that apply for RespOrg status are enhanced voice mail providers, VoIP carriers, call tracking and marketing analytics firms, or vanity number firms. Neither the Commission nor the SBA has developed a small business size standard specifically for RespOrgs. There are 404 RespOrgs certified by SMS/800. Consequently, we estimate that there are not more than 404 RespOrgs that are small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

376. The transition to a simplified contribution system could affect all telecommunications providers, including small entities, and may include new administrative processes. The Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all telecommunications providers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of such costs or burdens.

377. *Apportioning Revenues from Bundled Services.* Under the current Fund contribution system, revenues from telecommunications offerings are subject to contribution assessment while revenues from information services and consumer-premises equipment (CPE) are excluded from the contribution base. A telecommunications provider must therefore apportion its revenues between telecommunications and non-telecommunications sources for purposes of contribution assessment. Telecommunications providers can currently apportion their bundled revenues pursuant to two safe harbor methods established by the Commission. In addition to the safe harbors, a telecommunications provider could apportion its bundled revenues using any reasonable alternative method. In the Notice, we seek comment on ways to simplify the apportionment of bundled offerings. We seek comment on a bright-line rule that codifies a modified version of the two safe harbors. If adopted, this change would affect how telecommunications providers apportion and report revenues from bundled services.

378. *Contributions for Services with an Interstate Telecommunications Component.* We seek comment on what revenues should be assessed to the extent we choose to exercise our permissive authority over services that provide interstate telecommunications. We seek comment on whether we could and should require contributions on the full retail revenues of an information service that provides interstate telecommunications. We also seek comment on whether to assess only the telecommunications (i.e., the transmission) component and, if so, how we would we determine what portion of the integrated service revenues should be associated with the transmission component. We also ask whether we should craft a rule, or safe harbor, that provides for assessment of a certain percentage of retail revenues of information services with a telecommunications (transmission) component. If adopted, this change would affect all providers of services that contain an interstate telecommunications component.

379. *Allocating Revenues Between Inter- and Intrastate Jurisdictions.* We also seek comment on whether the Act compels us to only assess a portion of revenues associated with services that operate interstate, intrastate, or internationally. In the Notice, we seek comment on whether to (1) adopt a rule that requires all providers subject to contributions to report and contribute on all revenues derived from assessable services rather than require providers to allocate revenues between the interstate and intrastate jurisdictions; (2) adopt a bright line rule for how companies should allocate revenues between jurisdictions for broad categories of services; or (3) find that for USF contribution purposes, revenues from such services should be reported as 100 percent interstate. If adopted, this change would affect how telecommunications providers allocate and report mixed jurisdiction revenues.

380. *Contribution Obligations of Wholesalers and Their Customers.* We seek comment on modifying the existing Fund contribution methodology to assess value-added revenues rather than end-user revenues. Under a value-added approach, each telecommunications provider in a service chain would contribute based on the value it ''adds'' to the service. Alternatively, we seek comment on whether we should mandate greater specificity in contributor certifications to their wholesalers. If adopted, this change would affect how revenues are reported.

381. *Reporting Prepaid Calling Card Revenues.* In the Notice, we seek comment on adopting a rule to require prepaid calling card providers to report and contribute on all end-user revenues, and who should be deemed the end user for purposes of such a rule. We seek comment on rules standardizing the reporting of prepaid calling card revenues. We propose rules requiring all telecommunications providers (as well as telecommunications carriers) to register with the Commission, and rules requiring entities that provide telecommunications to others for resale to check the registration status of the their customers. We believe these rules will provide reporting entities with enhanced certainty regarding their contributions obligations. If adopted, this change would affect telecommunications providers that are wholesalers and resellers of prepaid calling cards.

382. *International Telecommunications Providers.* We seek comment on eliminating the exemption for international-only providers and limited international revenues exemption (LIRE)-qualifying providers. We also seek comment on modifying the LIRE exemption by requiring LIRE-qualifying providers to contribute on at least a portion of its revenues. If adopted, this change would affect international-only telecommunications providers and telecommunications providers who may have previously relied on the LIRE exemption.

383. *Reforming the De Minimis Exemption.* The Commission has authority to exempt a carrier or class of carriers from Fund contribution requirements if their contributions would be *de minimis.* Currently, *de minimis* status is determined on a providers' annual contribution amount. In the Notice, we seek comment on simplifying the exemption by basing it on a provider's annual assessable revenues. This should simplify the process by which entities may determine if they qualify for the *de minimis* exception. If adopted, this change would affect *de minimis* telecommunications providers.

384. *Assessing Contributions Based on Connections.* In this Notice, we seek comment on whether we should adopt a contribution system based on connections. Under a connections-based system, providers could be assessed based on the number, speed, or capacity of connections to a communications network provided to customers. Providers would contribute a set amount per connection, regardless of the revenues derived from that connection. We seek comment on whether a connections-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters. If adopted, this change would affect all telecommunications providers.

385. *Assessing Contributions Based on Numbers.* We also seek comment on whether we should adopt a contributions system based on numbers. Under a numbers-based system, in its simplest form, providers would be assessed based on their count of North American Numbering Plan telephone numbers. There would be a standard monthly assessment per telephone number, such as $1 per month, with potentially higher and lower tiers for certain categories of numbers based on how these numbers are assigned or used. The monthly assessment per number would be calculated by applying a formula based on the USF demand requirement and the relevant count of numbers, however that term is defined. We seek comment on whether a numbers-based approach would better meet our proposed goals of promoting efficiency, fairness, and sustainability in the Fund, as well as other goals identified by commenters. If adopted, this change would affect all telecommunications providers.

386. *Assessing Contributions Based on a Hybrid Methodology With a Numbers Component.* In this Notice, we also seek comment on whether we should consider a hybrid approach that combines a telephone numbers component with a connections component. Under such an approach, providers could be assessed a flat fee for each assessable NANP telephone number and assessed a fee based on the connection for services not associated with a NANP telephone number. We seek comment on whether a hybrid approach would better meet our proposed goals for reforming the contributions methodology. If adopted, this change would affect all telecommunications providers.

387. *Pass-Through of USF Contributions as a Separate Line Item Charge.* In this Notice, we seek comment on ways to improve the transparency for customers relating to the amount of universal service contribution charges that are being passed through by the providers to their customers. We seek comment on whether to: (1) Require greater clarity on customer bills regarding how the USF charge was calculated; (2) require providers to disclose at initiation of service the amount of the quoted rate or assessable units would be USF-assessable; and (3) if we were to adopt either of these rules, apply them to all customers, or limit the rules to mass market customers. We seek comment on whether to prohibit contributors from recovering contribution costs as a separate line item on the customer bill. We also seek comment on whether we should take steps to ensure that contributions are made by contributors that become insolvent, specifically by requiring contributors that recover their contribution obligation from end-users to segregate those end-user payments in dedicated trust accounts for the sole benefit of the USF. Finally, we propose to level the playing field between incumbent LECs and competitive LECs by adopting a rule that would prohibit competitive ETCs from recovering USF contribution costs for their Lifeline offerings from Lifeline subscribers. If adopted, this change would affect competitive telecommunications providers that serve Lifeline customers.

388. *Other Reporting Changes.* We propose requiring all telecommunications providers (as well as telecommunications carriers) to register with the Commission, and propose rules requiring registrants that provide telecommunications to others for resale to check the registration status of their customers. We also propose that telecommunications providers file electronically their quarterly and annual Telecommunications Reporting Worksheet, with a fee for those that file by paper. We believe these rules will provide reporting entities enhanced certainty regarding their contribution obligations.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

389. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of

differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

390. As indicated in the Notice, we seek to reform the contribution system. We believe our proposed rules will provide reporting entities enhanced certainty regarding their contribution obligations, which is especially important for small businesses that may not have the resources of larger business to comply with complex rules.

391. We believe that adopting a simplified and clearly defined apportionment method will provide greater predictability to all telecommunications providers and customers. The Notice seeks comment on a modified version of the two safe harbors available for apportioning revenues from bundled service offerings. We believe that providing a bright line rule for providers reduces the administrative burden for small entities.

392. We seek comment on whether we should modify the contribution methodology to assess ''value-added'' revenues rather than ''end user'' revenues. Under this approach, each telecommunications provider in a service value chain (including both wholesalers and resellers) would contribute based on the value in the providers adds to the service. We also seek comment on modifying the current reseller certification process to provide greater clarity regarding contribution obligations when wholesale inputs are incorporated into other services that are not telecommunications services. We believe that either of these approaches would simplify the reporting process for all parties, and provide greater certainty. For each approach, we seek comment on ways to streamline the overall reporting requirements for all parties. In addition, these potential rule changes would increase the Commission's administration and oversight of the contributions system in the wholesaler–reseller context.

393. We believe that our registration and deregistration proposals for all parties required to file the Telecommunications Reporting Worksheet will help ensure that the Commission's FCC Form 499–A Filer Database is current and complete. One of the purposes of registration is that it allows the Commission to better monitor registered providers for compliance with our rules and regulations. In addition, a filer registration requirement provides transparency to the public, making available important information including the relevant regulatory contact information. We recognize that the proposed registration and deregistration process may impose a small one-time burden on parties that were not previously required to register, but we believe the benefit of having a current and complete database may outweigh the burden.

394. We seek comment on modifying the *de minimis* exemption to base the threshold on assessable revenues rather than the amount of contributions. We believe this will simplify the contributions system and reduce the administrative burden for small entities. We also seek comment on whether this proposal might also reduce the reporting obligations and regulatory uncertainty for *de minimis* telecommunications providers that have growing revenues. Specifically, we seek comment on whether to make it optional for a telecommunications provider to file quarterly Telecommunications Reporting Worksheets for a year after which the provider qualifies as *de minimis.* We believe these changes might simplify the reporting obligations of small entities and reduces their administrative burden.

395. We seek comment on updating the Telecommunications Reporting Worksheets (FCC Forms 499–A and 499–Q) and its instructions. Specifically, we seek comment on whether we should modify the process by which these forms are revised by soliciting public comment from interested parties prior to adopting revisions to the forms or the instructions. We believe these changes would provide greater clarity to contributors and simplify compliance and the administration of the contributions process.

396. We note that in past contribution reform proceedings some parties have proposed alternative contribution methodologies based on numbers, connections, or a combination of numbers and connections. To the extent that parties believe that alternative systems would better promote our goals for contribution reform, we seek comment on the benefits of such systems relative to our proposed improved revenues system and ask for specific proposals on how such systems could be implemented.

397. The Notice seeks comment from all interested parties. The Commission is aware that some of the proposals or approaches under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals or approaches outlined in the Notice. We invite comment on how these proposals or approaches might be made less burdensome for small entities but still in keeping with our goals for contribution reform. We also invite commenters to discuss the benefits of such changes on small entities and to weigh these benefits against the burdens for telecommunications providers that might also be small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice, in reaching its final conclusions and taking action in this proceeding.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

398. None.

C. Paperwork Reduction Act Analysis

399. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Filing Requirements

400. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments. Comments on the proposed rules are due on or before July 9, 2012 and reply comments are due on or before August 6, 2012. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before August 6, 2012. All filings should refer to CC Docket No 06–122 and GN Docket No. 09–51. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

List of Subjects in 47 CFR Part 54

Communications Common Carriers, Reporting and Record Keeping Requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54, as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i), 201, 205, 214, 219, 220, 254, 303(r), and 1302 unless otherwise noted.

2. Amend § 54.706 by adding paragraphs (f), (g), and (h) to read as follows:

§ 54.706 Contributions.

* * * * *

(f) *Registration Requirements.* Every common carrier subject to the Communications Act of 1934, as amended, and every entity required to submit a Telecommunications Reporting Worksheet shall register with the Commission in accordance with the provisions of 47 CFR 64.1195(a) through (c) and the Instructions to the Telecommunications Reporting Worksheet within thirty days of the commencement of provision of service.

(g) *Deregistration Requirements.* If a registrant stops providing interstate and international telecommunications to others, it shall deregister with the Commission within thirty days of its last provision of telecommunications. To deregister, a registrant must comply with the Instructions to the Telecommunications Reporting Worksheet.

(h) *Customer Confirmation Requirements.* A telecommunications carrier or provider providing telecommunications to other carriers or providers shall have an affirmative duty to ascertain whether a customer that is required to register has in fact registered with the Commission prior to offering service to that customer.

3. Amend § 54.711 by adding paragraphs (d) and (e) to read as follows:

§ 54.711 Contributor reporting requirements.

* * * * *

(d) *Telecommunications Reporting Worksheet Revisions.* The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.

(e) *Electronic Filings.* Reporting entities must file the Telecommunications Reporting Worksheet electronically. The Administrator shall assess a $25 fee on reporting entities for filing paper copies of the quarterly Telecommunications Reporting Worksheet. The Administrator shall assess a $50 fee on reporting entities for filing paper copies of the annual Telecommunications Reporting Worksheet. The Administrator shall not assess a paper-filing fee on reporting entities that electronically file their Telecommunications Reporting Worksheet, but such entities must also submit either a paper or electronic certification attesting to the accuracy of the information reported therein under penalty of perjury.

4. Amend § 54.712 by adding paragraph (b) to read as follows:

§ 54.712 Contributor recovery of universal service costs from end users.

* * * * *

(b) *Lifeline Subscribers.* Eligible telecommunications carriers covered by §§ 69.131 and 69.158 are subject to the limitations on universal service end user charges set forth therein. All other eligible telecommunications carriers shall not recover federal universal service contribution costs from Lifeline services to Lifeline subscribers. This limitation does not apply to services to Lifeline subscribers that are not supported by Lifeline, such as per-minute or other additional charges beyond the service for which the customer receives Lifeline support.

5. Amend § 54.713 by revising paragraph (b) to read as follows:

§ 54.713 Contributor's failure to report or to contribute.

* * * * *

(b) If a universal service fund contributor fails to make full payment of the monthly amount established by the contributor's applicable Form 499–A or Form 499–Q, or the monthly invoice provided by the Administrator, on or before the date due, the payment is delinquent. Late fees, interest charges, and penalties for failure to remit any payment by the date due shall apply regardless of whether the obligation to pay that amount is appealed or otherwise disputed unless the Administrator or the Commission (pursuant to § 54.719) finds the disputed charges are the result of clear error by the Administrator. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest at the rate equal to the U.S. prime rate (in effect on the date of the delinquency) plus 3.5 percent, as well as administrative charges of collection and/or penalties and charges permitted by the applicable law (*e.g.,* 31 U.S.C. 3717 and implementing regulations).

* * * * *

[FR Doc. 2012–13611 Filed 6–6–12; 8:45 am]

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