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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–11–0063; NOP–11–11FR]

RIN 0581–AD018

National Organic Program (NOP); Amendment to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to enact one recommendation submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on April 29, 2010. This final rule revises the annotation for one substance on the National List, methionine, to reduce the maximum levels of synthetic methionine allowed in organic poultry production after October 1, 2012. This final rule permits the use of synthetic methionine at the following maximum levels per ton of feed after October 1, 2012: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds. This action also corrects the Chemical Abstracts Service (CAS) numbers for the allowable forms of synthetic methionine.

DATES: *Effective Date:* This rule is effective on October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established within the NOP (7 CFR part 205) the National List regulations sections 205.600 through 205.607. The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies nonagricultural synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501–6522), and NOP regulations, in section 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling must also appear on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on recommendations developed by the National Organic Standards Board (NOSB). Since established, the NOP has published multiple amendments to the National List: October 31, 2003 (68 FR 61987); November 3, 2003 (68 FR 62215); October 21, 2005 (70 FR 61217); June 7, 2006 (71 FR 32803); September 11, 2006 (71 FR 53299); June 27, 2007 (72 FR 35137); October 16, 2007 (72 FR 58469); December 10, 2007 (72 FR 69569); December 12, 2007 (72 FR 70479); September 18, 2008 (73 FR 54057); October 9, 2008 (73 FR 59479); July 6, 2010 (75 FR 38693); August 24, 2010 (75 FR 51919); December 13, 2010 (75 FR 77521); March 14, 2011 (76 FR 13504); August 3, 2011 (76 FR 46595); February 14, 2012 (77 FR 8089); May 15, 2012 (77 FR 28472); June 6, 2012 (77 FR 33290); and August 2, 2012 (77 FR 45903). Additionally, a proposed amendment to the National List was published on January 12, 2012 (77 FR 1980).

This final rule amends the National List to enact a recommendation submitted to the Secretary by the NOSB on April 29, 2010.

II. Overview of Amendment

The following provides an overview of the amendment made to the designated section of the National List regulations:

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule amends the listing for synthetic methionine at section 205.603(d)(1) of the National List regulations by removing the expiration date ''October 1, 2012'', revising the maximum levels of synthetic methionine allowed per ton of feed for organic poultry, and correcting the Chemical Abstracts Service (CAS) numbers in the annotation as follows:

(d)(1) DL-Methionine, DL-Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following maximum levels of synthetic methionine per ton of feed: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds.

Methionine is classified as an essential amino acid for poultry because it is needed to maintain viability and must be acquired through the diet. Methionine is required for proper cell development and feathering in poultry. Natural feed sources with a high percentage of methionine include blood meal, fish meal, crab meal, corn gluten meal, alfalfa meal, and sunflower seed meal. Synthetic methionine is also used in poultry feed. This substance is a colorless or white crystalline powder that is soluble in water. It is regulated as an animal feed nutritional supplement by the Food and Drug Administration (21 CFR 582.5475).

In 2001, the NOSB evaluated a technical advisory panel analysis of methionine against the criteria provided in the OFPA, and determined that the use of synthetic methionine in organic poultry feed is compatible with a system of organic poultry production. Based on multiple NOSB recommendations, AMS has amended section 205.603 of the National List to allow methionine as a synthetic substance for use in organic poultry production four times (68 FR 61987, 70 FR 61217, 73 FR 54057, and 75 FR 51919). AMS published a complete account of the past NOSB recommendations and rulemaking pertaining to methionine in the interim rule published in the **Federal Register** on August 24, 2010 (75 FR 51919)

(finalized on March 14, 2011 (76 FR 13501)).

On July 31, 2009, the Methionine Task Force (MTF), which is comprised of organic poultry producers, submitted a new petition requesting to extend the allowance for synthetic methionine for five years until October 2014. In addition, the MTF proposed that the total amount of synthetic methionine in the diet remain below the following levels, calculated as the average pounds per ton of 100% synthetic methionine over the life of the bird: laying chickens—4 pounds; broiler chickens—5 pounds; and, turkey and all other poultry—6 pounds. In consideration of the July 2009 petition and public comments, the NOSB issued two recommendations on April 29, 2010. These recommendations acknowledged a need for the continued allowance of synthetic methionine, and conveyed the intent to decrease the amount of synthetic methionine allowed in organic poultry production and encourage development of natural alternatives. One recommendation proposed to allow synthetic methionine in organic poultry production until October 1, 2012, at the following maximum levels per ton of feed: laying chickens—4 pounds; broiler chickens—5 pounds; and turkey and all other poultry—6 pounds. The first recommendation was implemented through a final rule published on March 14, 2011 (76 FR 13501).

This final rule addresses the second NOSB recommendation on synthetic methionine from April 2010.[1] This recommendation was based upon their evaluation of a petition submitted by the Methionine Task Force, a group of organic poultry producers, a third party technical review, and public comments received as part of their April 2010 public meeting.[2] In their deliberations, the NOSB conveyed that the intent of this recommendation was to balance various interests including: (i) Providing for the basic maintenance requirements of organic poultry; (ii) satisfying consumer preference to reduce the use of synthetic methionine in organic poultry production; and (iii) motivating the organic poultry industry to continue the pursuit of commercially sufficient sources of allowable natural sources of methionine. A detailed discussion of the NOSB recommendation is available in the proposed rule which was published in the **Federal Register** on February 6, 2012 (77 FR 5717).[3]

This NOSB recommendation from April 2010 recommended that AMS delete the expiration date from the substance's current restrictive annotation to provide for use of synthetic methionine in organic production after its current expiration date, October 1, 2012.[4] In response to the NOSB recommendation and public comment, this final rule removes the October 1, 2012 expiration date from the listing for synthetic methionine on the National List. In effect, removal of the expiration date from the current restrictive annotation provides for the use of synthetic methionine until it is reviewed again by the NOSB as part of either the substance's next sunset review or through the petition process.[5]

The NOSB also recommended a reduction in the maximum levels of synthetic methionine allowed in organic poultry feed as part of their April 2010 recommendation. In response to this recommendation, this final rule amends the listing for synthetic methionine by reducing the maximum levels of the substance allowed per ton of feed for organic poultry from ''laying chickens—4 pounds; broiler chickens—5 pounds; turkeys and all other poultry—6 pounds'' to ''laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds''.

Through this final rule, AMS is also correcting the CAS numbers for the forms of synthetic methionine specified on the National List. CAS numbers are numeric identifiers which are used to uniquely identify substances. As discussed in the proposed rule, two of the three CAS numbers in the current listing for synthetic methionine are not appropriately specified in the regulation (77 FR 5719). An overview of the changes is provided in Table 1.

TABLE 1—OVERVIEW OF CORRECTIONS TO CAS NUMBERS FOR ALLOWED FORMS OF SYNTHETIC METHIONINE

CAS #	Substance name	Is substance name included in current regulations?	Is CAS # included in current regulations?	Are CAS # and substance name included in final rule?
59–51–8	DL-Methionine	yes	yes	yes.
348–67–4	D-Methionine	no	yes	no.
63–68–3	L-Methionine	no	yes	no.
583–91–5	DL-Methionine-hydroxy analog.	yes	no	yes.
4857–44–7 and 922–50–9	DL-Methionine-hydroxy analog calcium.	yes	no	yes.

III. Related Documents

A notice was published in the **Federal Register** announcing a meeting of the NOSB and its planned deliberations to address a petition pertaining to the use of methionine in organic poultry production on March 17, 2010 (75 FR 12723).

The current listing for methionine was codified through publication of an interim rule with request for comments in the **Federal Register** on August 24, 2010 (75 FR 51919), and reaffirmed by a final rule published on March 14, 2011 (76 FR 13501).

[1] NOSB recommendation on Methionine, April 2010. Retrieved from the NOP Web site at: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5085081&acct=nosb.*

[2] The technical report and the petition for synthetic methionine, submitted by Dave Matinelli on behalf of the Methionine Task Force on July 2009, is retrievable from the NOP Web site in the Petitioned Substances Database under ''Methionine'' at: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5084508&acct=nopgeninfo.*

[3] There is an incorrect statement about the April 2010 NOSB recommendation in the proposed rule (77 FR 5717). On page 5718, the proposed rule states that ''the second NOSB recommendation from April 2010 * * * proposed reduced maximum levels of synthetic methionine after October 1, 2015''. The date in this statement is incorrect. This statement should have read ''the second NOSB recommendation from April 2010 * * * proposed reduced maximum levels of synthetic methionine after October 1, *2012''* (emphasis added).

[4] On February 29, 2012, AMS published a correction to the proposed rule addressing this NOSB recommendation (77 FR 12216). This correction removed the October 2, 1012 date from the amendatory language for synthetic methionine which was proposed in the proposed rule. This date was included in error.

[5] A petition to change the annotation for methionine was submitted by the Methionine Task Force on April 8, 2011. The petition is retrievable from the NOP Web site in the Petitioned Substances Database under ''Methionine'' at: *http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase.* The NOSB is currently reviewing the petition.

The proposal to allow the use of methionine as specified in this final rule was published as a proposed rule on February 6, 2012 (77 FR 5717).

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion or deletion from the National List. The National List petition process is implemented under section 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under section 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 6519(f) of the OFPA, this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

Section 6520 of the OFPA provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's final decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule is to continue the allowance of synthetic methionine in poultry production, which would otherwise expire in October 2012. While the rule will reduce the rates of synthetic methionine allowed in organic poultry feed, this action amends the regulations such that small entities will continue to have access to a substance for use in organic poultry production. AMS concludes that the economic impact of extending the allowance for synthetic methionine in organic poultry production, if any, will be minimal to small agricultural service firms. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to NOP's Accreditation and International Activities Division, the number of certified U.S. organic crop and livestock operations totaled over 17,000 in 2010. Based on USDA data from the Economic Research Service (ERS) in 2008, these operations contained more than 4.8 million certified acres consisting of 2,665,382 acres of cropland and 2,160,577 acres of pasture and rangeland.[6] The total acreage under organic management represents a twelve percent increase from 2007. Organic poultry production has steadily contributed to the overall growth in the organic food market. ERS estimated that there were 5,538,011 laying chickens and 9,015,984 broiler chickens raised under organic management in 2008.[7] ERS estimated the number of certified organic turkeys raised in the United States in 2008 at 398,531. Based on the USDA data reported by the National Agricultural Statistical Service (NASS), the US market value for organic eggs, and laying and broiler chickens was calculated at $352,831,850 in 2008.[8] In addition to being sold as whole products, organic eggs and poultry by-products are used in the production of organic processed products including

[6] U.S. Department of Agriculture, Economic Research Service. 2009. Data Sets: U.S. Certified Organic Farmland Acreage, Livestock Numbers and Farm Operations, 1992–2008. *http://www.ers.usda.gov/Data/Organic/.*

[7] Ibid.

[8] U.S. Department of Agriculture, National Agricultural Statistics Service. 2010. The 2007 Census of Agriculture, Organic Production Survey (2008): Volume 3, Special Studies, Part 2, AC–07–SS–2, Tables 10 & 11, pp 69–91. *http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Organics/ORGANICS.pdf.*

soups, broths, prepared meals, ice cream, and egg nog. U.S. sales of organic food and beverages have grown from $1 billion in 1990 to $26.7 billion in 2010. Sales in 2010 represented 7.7 percent growth over 2009 sales.[9]

In addition, USDA has 93 accredited certifying agents who provide certification services to producers and handlers under the NOP. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

E. Executive Order 13175

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

F. Comments Received on Proposed Rule NOP–11–11

AMS received 38 comments on the proposed rule. Comments were received from organic livestock producers, consumers, accredited certifying agents, trade associations, non-profit organizations, advocacy groups, and a methionine manufacturer. The majority of comments supported a continued allowance for synthetic methionine in organic poultry production after its current expiration date, October 1, 2012. Nine comments specifically supported the amendment as proposed. Seven of these nine comments further stated their support for the proposed action because it will meet the intent of the NOSB to phase out the use of synthetic methionine in organic poultry production over time. Three commenters opposed the proposed rule as they wanted no synthetic methionine to be included in organic poultry diets.

Changes Requested But Not Made

Many commenters stated that the proposed reduction in the maximum levels of synthetic methionine allowed per ton of feed could pose issues for some organic producers. These commenters described their concerns with the proposed reduction, including the lack of commercially available natural sources of methionine, and considerations pertaining to animal health and welfare and the environment.

Commenters stated that natural alternatives to compensate for the reduction in synthetic methionine are not commercially available at quantities that would meet the nutritional requirements of the birds. Commenters acknowledged that research was ongoing to identify high methionine feeds, but noted that these alternatives are not produced in sufficient quantities to meet the demand of the organic poultry market. Some commenters stated that, in the absence of natural alternatives, synthetic methionine continues to be important for overall production output, increased flock uniformity and reduced feed costs. Some commenters noted that poultry diets are corn and soybean based and suggested that producers may need to meet the nutritional requirement for methionine by overfeeding protein with extra soybean meal. A commenter questioned if a sufficient quantity of organic soybeans were available for this strategy of overfeeding soybean meal to compensate for reduced synthetic methionine levels. One commenter also suggested that feed costs could rise by 20% if producers opt to overfeed protein sources in response to the reduced levels.

Some commenters cited scientific literature and National Research Council (NRC)[10] recommendations on the quantity of methionine needed in a poultry diet to optimize animal health. The commenters stated that the nutritional requirements for birds change over time with greater methionine demand early in life and early in the laying period, and that the proposed reduction in synthetic methionine would not align with the nutritional demands of the birds during certain life stages. Commenters also referenced the benefits to animal welfare when the nutritional requirement for methionine is met. Commenters noted that diets with inadequate amounts of methionine could lead to increased feather pecking and cannibalism.

Some commenters also raised concerns about the environmental impacts of poultry diets with lower levels of synthetic methionine. These commenters stated that studies show that inclusion of synthetic methionine in poultry diets reduced greenhouse gas production, reduced nitrogen waste and required less land be cultivated to produce the same amount of poultry products as those without methionine supplementation. Other commenters noted that producers may choose to meet the methionine needs of the birds by overfeeding protein. These commenters stated that increased protein in the diet has been shown to lead to more nitrogen excretion and an increase in ammonia levels in poultry houses.

To address these concerns, commenters recommended alternatives to the proposed reduction in the levels of synthetic methionine. Some commenters suggested that the annotation on synthetic methionine should align with the methionine recommendation from the National Research Council. Some commenters stated that the maximum levels of methionine per ton of feed should remain at the levels currently codified (i.e. for laying chickens—4 pounds; for broiler chickens—5 pounds; and turkey and all other poultry—6 pounds). Other commenters suggested that, if the proposed reduction in synthetic methionine levels is finalized at 2 pounds for laying and broiler chickens and at 3 pounds for turkeys and all other poultry, then the annotation should specify that these levels be based upon an average amount of synthetic methionine per ton of feed fed over the life of the birds. These commenters noted that this latter approach would be consistent with the request of the 2011 petition submitted by the Methionine Task Force.

Consistent with the NOSB recommendation, AMS is maintaining the proposed amendment to allow synthetic methionine in organic poultry production after October 1, 2012, at reduced levels. The NOSB received numerous public comments at their April 2010 public meeting regarding the use of synthetic methionine in organic poultry production. During their deliberations, the NOSB also reviewed technical information on synthetic methionine in accordance with the criteria in OFPA (7 U.S.C. 6517–6518) and the NOP regulations for synthetic substances on the National List (§ 205.600). As part of their decision making, the NOSB is mandated by OFPA to evaluate whether alternative practices make the use of a substance

[9] Organic Trade Association. 2011. Organic Industry Survey. *www.ota.com.*

[10] The NRC is a branch of the National Academy of Sciences. The NRC determines the nutritional requirements for livestock species in various phases of production based upon a compilation of scientific studies.

such as synthetic methionine unnecessary. The NOSB recommended an allowance for lower levels of synthetic methionine based on their perspective that implementing management strategies and different housing practices should lessen or eliminate the need for synthetic methionine in organic production. The NOSB also believed that a reduction in the levels allowed after October 1, 2012, will stimulate further market development of natural alternatives and drive management changes in the organic poultry industry. Amending the listing for this substance on the National List to allow higher levels of the substance than recommended by the NOSB would not meet the intent of the NOSB to phase out the use of this synthetic methionine in organic poultry production over time. Therefore, consistent with the NOSB recommendation, AMS is codifying the amendment to synthetic methionine through this final rule as proposed.

One commenter suggested that poultry diets without synthetic methionine may not be in compliance with the Association of American Feed Control Officials' Model Feed Bill and Regulations which have been adopted in 18 states. This rule allows for synthetic methionine in organic poultry feed in accordance with its restrictive annotation on the National List. This action is not requiring the formulation of organic poultry feed without synthetic methionine.

Some commenters questioned the process through which the NOSB made its April 2010 recommendation to the NOP. Commenters reiterated that methionine requirements for poultry and the commercial availability of natural sources of methionine have not changed since the NOSB began its deliberations on the allowance for synthetic methionine in organic production. Therefore, commenters questioned, with the same information, the NOSB decision to further restrict the use of synthetic methionine in their April 2010 recommendation. One commenter also stated that the NOSB should have accepted additional public comment at the April 2010 meeting on the reduced levels of the substance in their recommendation prior to voting. One commenter disputed the information provided to the NOSB Livestock Committee by anonymous feed mills and scientific experts about the feed requirements for poultry.

On March 17, 2010, a notice was published in the **Federal Register** announcing a meeting of the NOSB and its planned deliberations to address a petition pertaining to the use of methionine in organic poultry production (75 FR 12723). In response to this notice, the NOSB accepted both written and oral public comment on this issue in advance of making their recommendation. All comments were considered alongside the technical information as part of the NOSB's recommendation on synthetic methionine to the Secretary.

Two commenters suggested that, if organic poultry were produced using synthetic substances, then the organic poultry products from these poultry should be labeled as produced through use of a synthetic. The NOP regulations authorize the use of synthetic substances that have been recommended by the NOSB and included on the National List by the Secretary. Requiring labeling for the use of synthetic inputs as suggested by the commenters is outside the scope of this rulemaking.

Several commenters provided comments in reference to the petition submitted in 2011 by the Methionine Task Force.[11] A few comments regarding the 2011 petition addressed the potential for increased audit times based on upon the petitioner's request and the need for NOSB to consider use of a natural omnivorous diet as an alternative to the petitioner's request. Other comments supported the 2011 petition and urged the NOSB to review it as soon as possible. These comments are outside the scope of this rulemaking. The NOSB is currently reviewing this petition and would accept comments on any NOSB proposal to address this petition as part of a future NOSB meeting.

AMS specifically requested comments on proposed corrections to the CAS numbers for the allowed forms of methionine. One comment was received from a trade association on this issue. The commenter stated that correcting the CAS numbers (348–67–4 for D-Methionine and 63–68–3 for L-Methionine) would not impact any poultry feeds currently on the market, but noted that the correction would prevent the addition of D-methionine or L-methionine in future feed formulations. AMS is retaining the corrections as proposed to ensure that the appropriate CAS numbers are reflected in the annotation for synthetic methionine on the National List. Forms of synthetic methionine which are not indicated by their CAS number on the National List at section 205.603 would need to be petitioned for review by the NOSB.

G. General Notice of Public Rulemaking

This final rule reflects a recommendation submitted to the Secretary by the NOSB for extending the use of synthetic methionine in organic poultry production. The NOSB evaluated this substance using criteria in the OFPA in response to a petition. The NOSB has determined that while wholly natural substitute products exist, they are not presently available in sufficient supplies to meet poultry producer needs. Therefore, some allowance for synthetic methionine is a necessary component of a nutritionally adequate diet for organic poultry. Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable and contrary to the public interest to give preliminary notice prior to putting this rule into effect in order to ensure the continued use of synthetic methionine after October 1, 2012, and avoid any disruption to the organic poultry market.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.603(d)(1) is revised to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(d) * * *

(1) DL-Methionine, DL-Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following maximum levels of synthetic methionine per ton of feed: Laying and broiler chickens—2

[11] The 2011 petition is available on line at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5090283&acct=nopgeninfo.* This petition requests an allowance for synthetic methionine as follows: The allowed maximum *average pounds per ton* of 100% synthetic methionine (MET) in the diet over the life of the bird be at the following levels: Laying chickens—2.5 lbs; Broiler chickens—3 lbs; Turkeys and all other poultry—3 lbs.

pounds; turkeys and all other poultry—3 pounds.

* * * * *

Dated: September 13, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–23083 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD66

Interest Rate Risk Policy and Program

Correction

In rule document 2012–02091, appearing on pages 55155–5167 in the issue of Thursday, February 2, 2012, make the following corrections:

1. On page 5157, in the second column, in the first line, the text entry ''by asset size cohort at year-end 2010, as depicted in Table 1:'' is deleted.

2. On page 5164, in the second column, under the heading ''Account Attributes'' on the second line, ''P\principal'' should read ''Principal''.

[FR Doc. C1–2012–2091 Filed 9–18–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0645; Directorate Identifier 2011–NM–052–AD; Amendment 39–17190; AD 2012–18–13]

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 all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD currently requires repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord, and corrective actions if necessary. This new AD adds various inspections for discrepancies at the aft pressure bulkhead, and related investigative and corrective actions if necessary. This AD was prompted by several reports of fatigue cracking at that location. We are issuing this AD to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage.

DATES: This AD is effective October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of May 10, 1999 (64 FR 19879, April 23, 1999).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999). That AD applies to the specified products. The NPRM published in the **Federal Register** on June 28, 2012 (77 FR 38547). That NPRM proposed to continue to require repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord, and corrective actions if necessary. That NPRM also proposed to require adding various inspections for discrepancies at the aft pressure bulkhead, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. Boeing supports the NPRM (77 FR 38547, June 28, 2012). Aviation Partners Boeing stated that it has reviewed the NPRM and has determined that the installation of winglets per supplemental type certificate ST01219SE does not affect the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 566 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
Low frequency eddy current (LFEC) inspection [retained actions from AD 99-08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)].	8 work-hours × $85 per hour = $680	$0	$680	$384,880.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed visual inspection [retained actions from AD 99-08-23, Amendment 39–11132 (64 FR 19879, April 23, 1999)].	2 work-hours × $85 per hour = $170	0	170	96,220.
Detailed, high frequency eddy current inspection, and LFEC inspections of the web at the ''Y'' chord of the bulkhead, the web located under the outer circumferential tear strap, the ''Z'' stiffeners at the dome cap, and existing repairs [new action].	Up to 60 work-hours × $85 per hour = $5,100 per inspection cycle.	0	5,100 per inspection cycle.	2,886,600 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Detailed and HFEC inspections for oil-canning	1 work-hour × $85 per hour = $85	$0	$85
LFEC or HFEC inspections for cracking	2 work-hours × $85 per hour = $170	0	170

We have received no definitive data that would enable us to provide cost estimates for the crack repairs specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

We 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) 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999), and adding the following new AD:

2012–18–13 The Boeing Company: Amendment 39–17190; Docket No. FAA–2012–0645; Directorate Identifier 2011–NM–052–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 24, 2012.

(b) Affected ADs

This AD supersedes AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999).

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by several reports of fatigue cracks in the aft pressure bulkhead. We are issuing this AD to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage.

(f) Compliance

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

(g) Retained Initial Inspection

This paragraph restates the initial inspection required by paragraph (a) of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999). Perform either

inspection specified by paragraph (g)(1) or (g)(2) of this AD at the time specified in paragraph (h) of this AD.

(1) Perform a low frequency eddy current (LFEC) inspection from the aft side of the aft pressure bulkhead to detect discrepancies (including cracking, misdrilled fastener holes, and corrosion) of the web of the upper section of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord, from stringer 15 left (S–15L) to stringer 15 right (S–15R), in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 53–10–54, dated December 5, 1998.

(2) Perform a detailed visual inspection of the aft fastener row attachment to the ''Y'' chord from the forward side of the aft pressure bulkhead to detect discrepancies (including cracking, misdrilled fastener holes, and corrosion) of the entire web of the aft pressure bulkhead at body station 1016.

(h) Retained Compliance Times

This paragraph restates the compliance times specified in paragraph (b) of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999). Perform the inspection required by paragraph (g) of this AD at the time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 40,000 or more total flight cycles as of May 10, 1999 (the effective date of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)): Inspect within 375 flight cycles or 60 days after May 10, 1999 (the effective date of AD 99–08–23), whichever occurs later.

(2) For airplanes that have accumulated 25,000 or more total flight cycles and fewer than 40,000 total flight cycles as of May 10, 1999 (the effective date of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)): Inspect within 750 flight cycles or 90 days after May 10, 1999 (the effective date of AD 99–08–23), whichever occurs later.

(3) For airplanes that have accumulated fewer than 25,000 total flight cycles as of May 10, 1999 (the effective date of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999)): Inspect prior to the accumulation of 25,750 total flight cycles.

(i) Retained Repetitive Inspections

This paragraph restates the repetitive inspections required by paragraph (c) of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999). Within 1,200 flight cycles after performing the initial inspection required by paragraph (g) of this AD, and thereafter at intervals not to exceed 1,200 flight cycles: Perform either inspection specified by paragraph (g)(1) or (g)(2) of this AD.

(j) Retained Corrective Actions

This paragraph restates the corrective actions required by paragraph (d) of AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999). If any discrepancy is detected during any inspection required by paragraph (g), (h), or (i) of this AD: Prior to further flight, accomplish the actions specified by paragraphs (j)(1) and (j)(3) of this AD, and paragraph (j)(2) of this AD, if applicable.

(1) Perform a high frequency eddy current inspection from the forward side of the bulkhead to detect cracking of the web at the ''Y'' chord attachment, around the entire periphery of the ''Y'' chord, in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 51–00–00, Figure 23, dated November 5, 1995.

(2) If the most recent inspection performed in accordance with paragraph (g) of this AD was not a detailed visual inspection: Accomplish the actions specified by paragraph (g)(2) of this AD. If the inspection was a detailed visual inspection, it is not necessary to repeat that inspection prior to further flight.

(3) Repair any discrepancy such as cracking or corrosion or misdrilled fastener holes using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(k) New Requirements: Inspections of the Web at the ''Y'' Chord Upper Bulkhead From S–15L to S–15R

At the later of the times specified in paragraphs (k)(1) and (k)(2) of this AD: Do detailed and LFEC inspections of the aft side of the bulkhead web, or do detailed and HFEC inspections from the forward side of the bulkhead, and do all applicable related investigative and corrective actions; in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraphs (r)(1) and (r)(3) of this AD. Inspect for cracks, incorrectly drilled fastener holes, and elongated fastener holes. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at the applicable times specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(1) Prior to the accumulation of 25,000 total flight cycles.

(2) Except as required by paragraphs (r)(2) and (r)(4) of this AD, at the later of the times specified in the ''Compliance Time'' column in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(l) New Requirements: Inspections of the Web at the ''Y'' Chord in the Lower Bulkhead From S–15L to S–15R

Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do detailed and eddy current inspections of the web from the forward or aft side of the bulkhead for cracks, incorrectly drilled fasteners, and elongated fasteners, in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraphs (r)(1) and (r)(3) of this AD. If any crack, incorrectly drilled fastener, elongated fastener, or corrosion is found, before further flight, repair the web using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Repeat the inspections at the applicable times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(m) New Requirements: One-Time Inspection Under the Tear Strap

Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do a one-time LFEC inspection for cracks on the aft side of the bulkhead of the web located under the outer circumferential tear strap, or do a one-time HFEC inspection for cracks from the forward side of the bulkhead of the web located under the outer circumferential tear strap, in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD. If any cracking is found, before further flight, repair the bulkhead using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(n) New Requirements: Inspection for Oil-Canning

Except as required by paragraph (r)(2) of this AD, at the applicable time specified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do a detailed inspection from the aft side of the bulkhead for oil-canning and do all applicable related investigative and corrective actions, in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD. Do all related investigative and corrective actions before further flight. Thereafter, repeat the inspection at the applicable times specified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. For oil-cans found within the limits specified in Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: In lieu of installing the repair before further flight, at the applicable times specified in table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, do initial and repetitive detailed and HFEC inspections for cracks of the oil-canning and install the repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. If any crack is found, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Installing the repair terminates the repetitive inspections for cracks.

(o) New Requirements: Inspection of the Dome Cap at the Center of the Bulkhead

Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do an eddy current inspection to detect any cracking of the dome cap at the center of the bulkhead, and do all applicable corrective actions, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. Do all corrective actions before further flight. Repeat the inspection at the times specified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(p) New Requirements: Inspection of the Forward Flange of the ''Z'' Stiffeners at the Dome Cap

Except as required by paragraphs (r)(2) and (r)(5) of this AD, at the applicable time specified in table 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do an HFEC inspection to detect any cracking of the ''Z'' stiffener flanges at the dome cap in the center of the bulkhead, in accordance with Part V of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD. If any crack is found, before further flight, repair the flanges using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Repeat the inspection at the applicable times specified in table 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(q) New Requirements: Inspection for Existing Repairs on the Bulkhead

Except as required by paragraph (r)(2) of this AD, at the applicable time specified in table 7 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Do a detailed inspection of the bulkhead web and stiffeners for existing repairs, in accordance with Part VI of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(1) of this AD.

(1) If any repair identified in the ''Condition'' column of table 8 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, is found and the ''Reference'' column refers to Appendix A, B, C, or D of that service bulletin: At the applicable times specified in table 8 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(2) of this AD, do a HFEC inspection or a LFEC inspection of the web for cracking, in accordance with Appendix A, B, C, or D, as applicable, of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011. If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD. Repeat the inspections, thereafter, at the applicable intervals specified in table 8 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(2) If any repair identified in the ''Condition'' column of table 8 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, is found and the ''Reference'' column refers to Appendix E of that service bulletin: At the applicable times specified in table 8 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, except as required by paragraph (r)(2) of this AD, remove the repair and replace with a new repair, in accordance with Appendix E of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(3) If any non-SRM (structural repair manual) repair is found and the repair does not have FAA-approved damage tolerance inspections, except as required by paragraph (r)(2) of this AD, at the applicable time specified in table 7 of Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011: Contact the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office, for damage tolerance inspections. Do those damage tolerance inspections at the times given using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(r) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, specifies a compliance time ''after the date of Revision 1 to this service bulletin,'' ''from the date of Revision 3 of this service bulletin,'' ''after the date of Revision 3 to this service bulletin,'' or ''of the effective date of AD 99–08–23,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Access and restoration procedures specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, are not required by this AD. Operators may do those procedures following their maintenance practices.

(4) Where table 1 of paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, specifies a compliance time relative to actions done ''in accordance with paragraph (a)(2) of AD 99–08–23,'' this AD requires compliance within the specified compliance time relative to actions specified in paragraph (g)(2) of this AD.

(5) Where the Condition columns in tables 2, 3, 5, and 6 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, refer to total flight cycles, this AD applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

(s) Terminating Action

Accomplishment of the requirements of paragraphs (k) through (q) of this AD terminates the requirements of paragraphs (g) through (j) of this AD.

(t) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (k) through (s) of this AD, if the actions were performed before the effective date of this AD using the service bulletins specified in paragraphs (t)(1) through (t)(4) of this AD.

(1) Boeing Alert Service Bulletin 737–53A1214, dated June 17, 1999.

(2) Boeing Alert Service Bulletin 737–53A1214, Revision 1, dated June 22, 2000.

(3) Boeing Alert Service Bulletin 737–53A1214, Revision 2, dated May 24, 2001.

(4) Boeing Alert Service Bulletin 737–53A1214, Revision 3, dated January 19, 2011.

(u) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 99–08–23, Amendment 39–11132 (64 FR 19879, April 23, 1999), are approved as AMOCs for the corresponding provisions of this AD.

(v) Related Information

For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6440; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

(w) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on October 24, 2012.

(i) Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on May 10, 1999 (64 FR 19879, April 23, 1999).

(i) Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 53–10–54, dated December 5, 1998.

(ii) Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 51–00–00, Figure 23, dated November 5, 1995.

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

(6) 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.

(7) You may view this 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 August 31, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22334 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0644; Directorate Identifier 2012–NM–011–AD; Amendment 39–17193; AD 2012–18–16]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Cessna Aircraft Company Model 750 airplanes. This AD was prompted by reports of direct current (DC) generator overvoltage events. This AD requires replacing the auxiliary power unit (APU) generator control unit (GCU). We are issuing this AD to prevent DC generator overvoltage events, which could result in smoke in the cockpit and loss of avionics and electrical systems.

DATES: This AD is effective October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 24, 2012.

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. 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: Christine Abraham, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: 316–946–4165; fax: 316–946–4107; email: *christine.abraham@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on June 25, 2012 (77 FR 37827). That NPRM proposed to require replacing the auxiliary power unit (APU) generator control unit (GCU).

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 37827, June 25, 2012) 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.

Costs of Compliance

We estimate that this AD affects 58 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	2 work-hours × $85 per hour = $170	$2,400	$2,570	$149,060

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–18–16 The Cessna Aircraft Company: Amendment 39–17193; Docket No. FAA–2012–0644; Directorate Identifier 2012–NM–011–AD.

(a) Effective Date

This AD is effective October 24, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Cessna Aircraft Company Model 750 airplanes, certificated in any category, having serial numbers –0222, –0225 through –0306 inclusive, and –0308.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Unsafe Condition

This AD was prompted by reports of direct current (DC) generator overvoltage events. We are issuing this AD to prevent DC generator overvoltage events, which could result in smoke in the cockpit and loss of avionics and electrical systems.

(f) Compliance

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

(g) Replacement

Except as required by paragraph (h) of this AD: Within 6 months after the effective date of this AD, replace the auxiliary power unit generator control unit (GCU) having part number (P/N) 9914752–2 with one having P/N 9914752–6, in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB750–24–30, dated December 5, 2011.

(h) Exceptions

(1) Where the Accomplishment Instructions of Cessna Service Bulletin SB750–24–30, dated December 5, 2011, state that operators must return the GCU having P/N 9914752–2 to the manufacturer, this AD does not require that action.

(2) Where the Accomplishment Instructions of Cessna Service Bulletin SB750–24–30, dated December 5, 2011, state that the operator must record that the service bulletin has been completed, this AD does not require that action.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Christine Abraham, Aerospace Engineer, Electrical Systems and Avionics Branch, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: 316–946–4165; fax: 316–946–4107; email: *christine.abraham@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Cessna Service Bulletin SB750–24–30, dated December 5, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone 316–517–6215; fax 316–517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html.*

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

(5) You may view this 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 September 4, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22337 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0997; Directorate Identifier 2011–NM–043–AD; Amendment 39–16963; AD 2012–04–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

Correction

In rule document 2012–4498 appearing on pages 12989–12991 of the issue of Monday, March 5, 2012 make the following correction:

§ 39.13 [Corrected]

■ On page 12990, in the second column, in paragraph (g), in the last line, ''EASA (or its delegated'' should read ''EASA (or its delegated agent).''

[FR Doc. C1–2012–4498 Filed 9–18–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1408; Directorate Identifier 2008–SW–10–AD; Amendment 39–17184; AD 2012–18–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters to require cleaning, inspecting, and lubricating each tangential gearbox (gearbox) and adjusting, as necessary, the fuel shut-off control lever. This AD was prompted by the jamming of one of two fuel shut-off control levers because of solidified grease in the gearbox. A companion gearbox had extensive corrosion. In case of an emergency, pilots may need to use the control levers to shut off fuel going into the engine and to shut off the helicopter's electrical power system. The jamming of the levers prevents the shut off of the engine fuel and prevents the parallel-mounted micro switches from switching off the electrical power system. These actions are intended to prevent the jamming of the control levers, which could prevent shut-off of the engine fuel and electrical power system during an emergency shutdown.

DATES: This AD is effective October 24, 2012.

The Director of the Federal Register approved the incorporation by reference certain documents as of October 24, 2012.

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

On December 28, 2011, at 76 FR 81430, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Eurocopter Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. That NPRM proposed to require within 50 hours time-in-service (TIS) cleaning, inspecting and lubricating each gearbox, and adjusting, as necessary, the fuel shut-off control travel.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD No. 2007–0082–E, dated March 27, 2007, to correct an unsafe condition for the Eurocopter Model SA330F, SA330G, SA330J, AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters. EASA advises that the emergency AD was issued following two reports of jamming of one of the fuel shut-off control levers discovered during maintenance. In both cases, this jamming originates from solidified grease in the gearboxes. EASA also found corrosion in a gearbox. Jamming of a fuel shut-off control lever constitutes an unsafe condition because it prevents the shut off of engine fuel and prevents the parallel-mounted electrical micro switches, normally activated by shutting off both of the fuel shut-off control levers, from switching off the electrical power system during an emergency shut down.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except we are replacing the word ''travel'' in the required actions paragraph with the more accurate word ''lever,'' and other minor editorial changes. These changes are consistent with the intent of the proposals in the NPRM and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

- We use the word ''inspect'' to describe the actions required by a mechanic rather than the word ''check.''
- We refer to the compliance time as ''hours TIS'' rather than ''flying hours.''
- We use a different compliance time for inspecting and lubricating the gearboxes.
- We are not including the military model helicopters or Model AS332C1 in the applicability because they are not type certificated in the United States.
- We are not requiring measuring the operating loads of the fuel shut-off controls per paragraph 1.1 of the EASA AD (paragraph 2.B.1 of the Eurocopter Alert Service Bulletin).

Related Service Information

Eurocopter has issued an Alert Service Bulletin (ASB), Revision 1, dated March 22, 2007, with three numbers (Nos. 76.00.04, 76.00.03, and 76.03). ASB No. 76.03 applies to the U.S. type-certificated Model SA330F, SA330G, and SA330J and also applies to the non-type-certificated military Model 330 helicopters. ASB No. 76.00.04 applies the U.S. type-certificated Model AS332C, AS332L, AS332L1, and AS332L2 helicopters and also applies to the non-type-certificated AS332C1 and military Model 332 helicopters. ASB No. 76.00.03 applies to the non-type-certificated military Model 532 helicopters. EASA classified this service information as mandatory and issued Emergency AD No. 2007–0082–E, dated

March 27, 2007, to correct the same unsafe condition as identified in the service information.

Costs of Compliance

We estimate that this proposed AD will affect 29 helicopters of U.S. registry. We also estimate that the cost to comply with this AD is $255 per helicopter, $7,395 for the fleet, assuming three work-hours at $85 per hour to lubricate each gearbox.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–18–08 EUROCOPTER FRANCE: Amendment 39–17184; Docket No. FAA–2011–1408; Directorate Identifier 2008–SW–10–AD.

(a) Applicability

This AD applies to Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as jamming of one of the fuel shut-off control levers because of solidified grease in a tangential gearbox (gearbox), which could prevent a pilot from the shutting off the engine fuel and prevent the parallel-mounted electrical micro switches from switching off the electrical power system during an emergency shutdown.

(c) Effective Date

This AD becomes effective October 24, 2012.

(d) Compliance

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

(e) Required Actions

Within 50 hours time-in-service, clean, inspect, and lubricate each gearbox and adjust, as necessary, the fuel shut-off control lever by following the Accomplishment Instructions, Paragraph 2.B.2 (reference Figures 3 through 7), of Eurocopter Alert Service Bulletin (ASB) No. 76.03, Revision 1, dated March 22, 2007, for the Model SA330F, SA330G, and SA330J helicopters, or ASB No. 76.00.04, Revision 1, dated March 22, 2007, for the Model AS332C, AS332L, AS332L1, and AS332L2 helicopters.

(f) Alternative Methods of Compliance (AMOCs)

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

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency Emergency AD No. 2007–0082–E, dated March 27, 2007.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7600, Engine Controls.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Eurocopter ASB No. 76.00.04, Revision 1, dated March 22, 2007.

(ii) Eurocopter ASB No. 76.03, Revision 1, dated March 22, 2007.

Note 1 to paragraph (i)(2): Eurocopter Alert Service Bulletin (ASB) No. 76.00.04, Revision 1, dated March 22, 2007, and Eurocopter ASB No. 76.03, Revision 1, dated March 22, 2007, are co-published as one document along with Eurocopter ASB No. 76.00.03, Revision 1, dated March 22, 2007, which is not incorporated by reference in this AD.

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

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

(5) You may also review a copy 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/code_of_federal_regulations/ibr_locations.html*

Issued in Fort Worth, Texas, on August 30, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–22031 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0142; Directorate Identifier 2010–NM–275–AD; Amendment 39–17188; AD 2012–18–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by reports of failures of a hydraulic accumulator's screw-cap/end cap while on the ground that resulted in loss of use of that hydraulic system, and in high-energy impact damage to adjacent systems and structures. This AD requires an inspection for part numbers; repetitive inspections for any cracking of certain hydraulic system accumulators, and replacement, if necessary; and revising the maintenance program to include a life limit for certain hydraulic system accumulators. We are issuing this AD to prevent loss of use of a hydraulic system, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 24, 2012.

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 20, 2012 (77 FR 16193). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. The lowest number of flight cycles accumulated at the time of failure, to date, has been 6,991 flight cycles.
>
> Although there have been no failures to date on any CL–600–2C10, CL–600–2D15 or CL–600–2D24 aeroplanes, similar accumulators to those installed on the CL–600–2B19, are installed. The part numbers (P/Ns) of the accumulators installed on CL–600–2C10, CL–600–2D15 and CL–600–2D24 aeroplanes are 900096–1 (Hydraulic System No. 1 and Hydraulic System No. 2 accumulators), 900097–1 (Hydraulic System No. 3 accumulator) and 08–60204–001 (Inboard Brake and Outboard Brake accumulators).
>
> A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.
>
> This [Canadian] directive gives instructions to conduct [an inspection to determine if certain hydraulic accumulators are installed and, if necessary,] repetitive ultrasonic inspections [for cracking] of the Hydraulic System No. 1, Hydraulic System No. 2, Hydraulic System No. 3, Inboard Brake and Outboard Brake accumulators, P/Ns 900096–1, 900097–1, and 08–60204–001, that are not identified by the letter ''M'' or ''T'' after the S/N [serial number] on the identification plate.
>
> * * * * *

Required actions include revising the maintenance program to include a life limit for certain accumulators, and for airplanes on which cracking is found during an ultrasonic inspection, replacing the accumulator with a new accumulator containing the letter ''M'' or ''T'', as applicable, after the serial number on the identification plate or with a new accumulator with a different part number, and eventual replacement of certain accumulators with new accumulators. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Reference Most Recent Service Information

Comair Inc. (Comair) requested that we reference the most recent service information. Comair also stated that the revised service information has no effect on airplanes on which inspections, replacements, or maintenance program revisions were accomplished using the previous issues that were identified in the NPRM (77 FR 16193, March 20, 2012).

We agree to reference the most recent service information of certain service bulletins as identified below.

- Bombardier Alert Service Bulletin A670BA–29–011, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010 (for hydraulic system No. 1, and hydraulic system No. 2 accumulators).
- Bombardier Alert Service Bulletin A670BA–29–012, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010 (for hydraulic system No. 3 accumulators).
- Bombardier Alert Service Bulletin A670BA–32–021, Revision D, dated December 22, 2010, including Appendix A, Revision A, dated October 18, 2007 (for inboard and outboard brake accumulators).
- Bombardier Service Bulletin 670BA–29–013, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010 (for hydraulic system No. 1, and hydraulic system No. 2 accumulators).
- Bombardier Service Bulletin 670BA–32–026, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010 (for inboard and outboard brake accumulators).
- Bombardier Service Bulletin 670BA–32–028, Revision A, dated February 3, 2011 (for inboard brake and outboard brake accumulators).

This revised service information does not add more work to the actions described in the NPRM (77 FR 16193, March 20, 2012). We have revised paragraphs (i), (p), (q), and (t) of this AD accordingly.

Request To Include an Alternative Method of Compliance (AMOC) for a Different Part Number (P/N)

Tactair Fluid Controls (Tactair) requested that we include a hydraulic accumulator having P/N 11093–4 as an AMOC for replacing hydraulic accumulators having P/N 08–60204–001. Tactair noted that more than half

of the airplanes in the Model CL–600–2B19 fleet have been retrofitted to P/N 11093–4. Tactair also indicated that allowing use of P/N 11093–4 would be more economical for operators.

We disagree with the commenter's request. Part number 11093–4 has not yet been certified for use on Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), or CL–600–2D24 (Regional Jet Series 900) airplanes. Approval of AMOCs provides alternative methods of compliance to the methods required to be used in the associated AD. An AMOC is issued only after an AD has been issued and only after data are provided to show that the proposed solution is complete and addresses the unsafe condition. Once we issue this AD, any person may request approval of an AMOC under the provisions of paragraph (s)(1) of this AD. We have not changed this AD in this regard.

Updated Credit Language

We have revised the heading and wording for paragraph (q) of this AD to provide appropriate credit for previous accomplishment of certain actions. This change does not affect the intent of that paragraph.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

Costs of Compliance

We estimate that this AD will affect 389 products of U.S. registry. We also estimate that it will take up to 21 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $8,988 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be up to $4,190,697, or $10,773 per product, per inspection cycle.

In addition, we estimate that any necessary follow-on actions would take up to 7 work-hours and require parts costing $8,988, for a cost of $9,583 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 16193, March 20, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–18–11 Bombardier, Inc.: Amendment 39–17188. Docket No. FAA–2012–0142; Directorate Identifier 2010–NM–275–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 24, 2012.

(b) Affected ADs

None.

(c) Applicability

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

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, with serial number (S/N) 10003 through 10314 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, with S/N 15001 through 15259 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 29: Hydraulic Power, and 32: Landing Gear.

(e) Reason

This AD was prompted by reports of failures of a hydraulic accumulator's screw-cap/end cap while on the ground that resulted in loss of use of that hydraulic system, and in high-energy impact damage to adjacent systems and structures. We are issuing this AD to prevent loss of use of a hydraulic system, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection for Part Numbers (P/Ns)

At the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, inspect the hydraulic accumulators in hydraulic systems No. 1, No. 2, and No. 3, and the inboard and outboard brake systems, to determine the part number of the

accumulator. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the accumulator can be conclusively determined from that review.

(1) For an accumulator with more than 4,500 total flight cycles as of the effective date of this AD, inspect that accumulator within 500 flight cycles after the effective date of this AD.

(2) For an accumulator with 4,500 or less total flight cycles as of the effective date of this AD, inspect that accumulator before it has accumulated 5,000 total flight cycles.

(3) If it is not possible to determine the total flight cycles accumulated on an accumulator, inspect that accumulator within 500 flight cycles after the effective date of this AD.

(h) Inspection for Letter Designation After the Serial Number

If, during an inspection required by paragraph (g) of this AD, an accumulator having P/N 900096–1 (for hydraulic systems No. 1 and No. 2 accumulators), 900097–1 (for hydraulic system No. 3 accumulator), or 08–60204–001 (for inboard and outboard brake accumulators) is found, at the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, do an inspection of the identification plate on the hydraulic accumulator to determine if an ''M'' (for hydraulic system accumulators) or a ''T'' (for brake system accumulators) follows the serial number on the identification plate. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and the letter of the accumulator can be conclusively determined from that review.

Note 1 to paragraphs (h), (i), (k), (l)(2), and (m) of this AD: The letter ''M'' after the serial number on the identification plate is applicable to accumulators, P/Ns 900096–1 and 900097–1, on hydraulic systems No. 1, No. 2, and No. 3. The letter ''T'' after the serial number on the identification plate is applicable to accumulators, P/N 08–60204–001, on the brake system.

(i) Initial Ultrasonic Inspections of Hydraulic System No. 1, Hydraulic System No. 2, Hydraulic System No. 3, Inboard Brake, and Outboard Brake Accumulators

If, during any inspection required by paragraph (h) of this AD, any accumulator without the letter ''M'' (for hydraulic system accumulators) or a ''T'' (for brake system accumulators) after the serial number is found, at the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do an ultrasonic inspection of the inner shoulders of the accumulator screw-cap for cracking, in accordance with Part B of the Accomplishment Instructions of the applicable Bombardier service bulletin identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, and at the internal threads of the screw-caps, in accordance with the Accomplishment Instructions of the applicable Bombardier service bulletin identified in paragraphs (i)(4), (i)(5), and (i)(6) of this AD.

(1) For hydraulic system No. 1, and hydraulic system No. 2 accumulators: Bombardier Alert Service Bulletin A670BA–29–011, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010.

(2) For hydraulic system No. 3 accumulators: Bombardier Alert Service Bulletin A670BA–29–012, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010.

(3) For inboard brake and outboard brake accumulators: Bombardier Alert Service Bulletin A670BA–32–021, Revision D, dated December 22, 2010, including Appendix A, Revision A, dated October 18, 2007.

(4) For hydraulic system No. 1 accumulators: Bombardier Service Bulletin 670BA–29–013, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(5) For hydraulic system No. 2 accumulators: Bombardier Service Bulletin 670BA–29–013, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(6) For inboard brake and outboard brake accumulators: Bombardier Service Bulletin 670BA–32–026, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(j) No Cracking Found During Accomplishment of the Actions Required by Paragraph (i) of This AD

If no cracking is found during the inspections required by paragraph (i) of this AD, do the actions required by paragraph (l) of this AD.

(k) Cracking Found During Accomplishment of the Actions Required by Paragraph (i) of This AD

If any cracking is found during the inspections required by paragraph (i) of this AD, before further flight, replace the accumulator with a new accumulator containing the letter ''M'' or ''T'', as applicable, after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (i)(1) through (i)(6) of this AD, or replace the accumulator with a new accumulator as specified in paragraphs (k)(1) through (k)(3) of this AD, as applicable.

(1) For any cracked hydraulic system No. 1 or No. 2 accumulator, replace the cracked accumulator with a new accumulator, P/N 900121–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(2) For any cracked hydraulic system No. 3 accumulator, replace the cracked accumulator with a new accumulator, P/N 900122–1, in accordance with paragraph (o) of this AD.

(3) For any cracked inboard brake or outboard brake accumulator, replace the cracked accumulator with a new accumulator, P/N 90006691, in accordance with paragraph (p) of this AD.

(l) Repetitive Ultrasonic Inspections of Hydraulic System No. 1, Hydraulic System No. 2, Hydraulic System No. 3, Inboard Brake, and Outboard Brake Accumulators

For each accumulator on which no cracking was found during any inspection required by paragraph (i) of this AD, within 500 flight cycles after the previous ultrasonic inspection, inspect the accumulator in accordance with paragraph (i) of this AD.

(1) If no cracking is found, do the actions required by paragraph (l) of this AD and repeat thereafter at intervals not to exceed 500 flight cycles.

(2) If any cracking is found, before further flight, replace the accumulator with a new accumulator containing the letter ''M'' or ''T,'' as applicable, after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraphs (i)(1) through (i)(6) of this AD, or replace the accumulator with a new accumulator as specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD, as applicable.

(m) Replacement of Hydraulic System No. 1 and No. 2 Accumulators

For airplanes on which a hydraulic system No. 1 or No. 2 accumulator having P/N 900096–1 without the letter ''M'' after the serial number is installed: At the applicable time specified in paragraphs (m)(1) and (m)(2) of this AD, replace the accumulator with a new accumulator having P/N 900096–1 with the letter ''M'' after the serial number; or having P/N 900121–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(1) For an accumulator with more than 19,500 total flight cycles as of the effective date of this AD, replace that accumulator within 500 flight cycles after accomplishing the most recent inspection required by paragraph (i) or (l) of this AD.

(2) For an accumulator with 19,500 or less total flight cycles as of the effective date of this AD, replace that accumulator before it has accumulated 20,000 total flight cycles.

(3) If it is not possible to determine the total flight cycles accumulated on an accumulator, replace that accumulator within 500 flight cycles after accomplishing the most recent ultrasonic inspection required by paragraph (i) or (l) of this AD.

(n) Hydraulic System Safe Life Limit Introduction

Within 60 days after the effective date of this AD, revise the maintenance program to include a safe life limit for the hydraulic system No. 1 and No. 2 accumulators, P/N 900096–1, by incorporating Tasks 29–11–11–000–801 and 29–11–11–400–801 of Section 1.3—Safe Life Components, of Part 2, Airworthiness Limitations, Revision 11, dated October 20, 2010, of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, CSP B–053.

(o) Replacement of Hydraulic System No. 3 Accumulator

Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, replace any hydraulic system No. 3 accumulator having P/N 900097–1 with a new accumulator having P/N 900122–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–015, dated December 22, 2010.

(p) Replacement of Inboard or Outboard Brake System Accumulators

Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, replace any inboard or outboard brake system accumulator having P/N 08–60204–001 with a new accumulator having P/N 90006691, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–028, Revision A, dated February 3, 2011.

(q) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Part B of the Accomplishment Instructions of the Bombardier service bulletin identified in paragraph (q)(1)(i), (q)(1)(ii), (q)(1)(iii), (q)(1)(iv), (q)(1)(v), (q)(1)(vi), (q)(1)(vii), or (q)(1)(viii) of this AD.

(i) Bombardier Alert Service Bulletin A670BA–29–011, dated October 18, 2007.

(ii) Bombardier Alert Service Bulletin A670BA–29–011, Revision A, dated July 27, 2010.

(iii) Bombardier Alert Service Bulletin A670BA–29–012, dated March 13, 2008.

(iv) Bombardier Alert Service Bulletin A670BA–29–012, Revision A, dated July 27, 2010.

(v) Bombardier Alert Service Bulletin A670BA–32–021, dated November 21, 2006.

(vi) Bombardier Alert Service Bulletin A670BA–32–021, Revision A, dated March 7, 2007.

(vii) Bombardier Alert Service Bulletin A670BA–32–021, Revision B, dated October 18, 2007.

(viii) Bombardier Service Bulletin A670BA–32–021, Revision C, dated July 27, 2010.

(2) This paragraph provides credit for the actions required by paragraphs (i) and (p) of this AD, if those actions were performed before the effective date of this AD using the Accomplishment Instructions of the Bombardier service bulletin identified in paragraph (q)(2)(i), (q)(2)(ii), (q)(2)(iii), (q)(2)(iv), or (q)(2)(v) of this AD.

(i) Bombardier Service Bulletin 670BA–29–013, dated January 29, 2010.

(ii) Bombardier Service Bulletin 670BA–29–013, Revision A, dated July 27, 2010.

(iii) Bombardier Service Bulletin 670BA–32–026, dated January 29, 2010.

(iv) Bombardier Service Bulletin 670BA–32–026, Revision A, dated July 27, 2010.

(v) Bombardier Service Bulletin 670BA–32–028, dated December 22, 2010.

(r) Terminating Actions

Accomplishing the actions required by paragraphs (m), (n), (o), and (p) of this AD terminates the requirements of this AD for the accumulator at that location only.

(s) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(t) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2010–35R1, dated June 28, 2011, and the service information identified in paragraphs (t)(1) through (t)(9) of this AD, for related information.

(1) Bombardier Alert Service Bulletin A670BA–29–011, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010.

(2) Bombardier Alert Service Bulletin A670BA–29–012, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010.

(3) Bombardier Alert Service Bulletin A670BA–32–021, Revision D, dated December 22, 2010, including Appendix A, Revision A, dated October 18, 2007.

(4) Bombardier Service Bulletin 670BA–29–013, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(5) Bombardier Service Bulletin 670BA–32–026, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(6) Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(7) Bombardier Service Bulletin 670BA–29–015, dated December 22, 2010.

(8) Bombardier Service Bulletin 670BA–32–028, Revision A, dated February 3, 2011.

(9) Tasks 29–11–11–000–801 and 29–11–11–400–801 of Section 1.3—Safe Life Components, of Part 2, Airworthiness Limitations, Revision 11, dated October 20, 2010, of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, CSP B–053.

(u) Material Incorporated by Reference

(1) 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.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Alert Service Bulletin A670BA–29–011, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010.

(ii) Bombardier Alert Service Bulletin A670BA–29–012, Revision B, dated December 22, 2010, including Appendix A, Revision A, dated July 27, 2010.

(iii) Bombardier Alert Service Bulletin A670BA–32–021, Revision D, dated December 22, 2010, including Appendix A, Revision A, dated October 18, 2007.

(iv) Bombardier Service Bulletin 670BA–29–013, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(v) Bombardier Service Bulletin 670BA–32–026, Revision B, dated December 22, 2010, including Appendix A, dated January 29, 2010.

(vi) Bombardier Service Bulletin 670BA–29–014, dated December 22, 2010.

(vii) Bombardier Service Bulletin 670BA–29–015, dated December 22, 2010.

(viii) Bombardier Service Bulletin 670BA–32–028, Revision A, dated February 3, 2011.

(ix) Tasks 29–11–11–000–801 and 29–11–11–400–801 of Section 1.3—Safe Life Components, of Part 2, Airworthiness Limitations, Revision 11, dated October 20, 2010, of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, CSP B–053.

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

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. 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 an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 31, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22042 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0115; Directorate Identifier 2010–NE–40–AD; Amendment 39–17195; AD 2012–18–18]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines. That AD currently requires accomplishment of the TU166 modification. This new AD requires adding the Arriel 2S2 and 2C2 engines to the applicability of engines requiring the TU166 modification with different compliance times. This AD was prompted by reports of an accident involving a twin-engine helicopter powered by two Arriel 2S2 engines. We are issuing this AD to prevent rupture of a gas generator (GG) turbine blade, which could result in an uncommanded in-flight shutdown and a forced landing or accident.

DATES: This AD is effective October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 12, 2011 (76 FR 40222, July 8, 2011).

ADDRESSES: For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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: Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–13–05, Amendment 39–16728 (76 FR 40222, July 8, 2011). That AD applies to Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines. The NPRM published in the **Federal Register** on June 1, 2012 (77 FR 32437). That NPRM proposed to continue to require accomplishment of the TU166 modification on Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines. That NPRM also proposed to require adding the Arriel 2S2 engine to the applicability of engines requiring the TU166 modification with a different compliance time.

Comments

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

Request To Add the Arriel 2C2 Engine Model

Turbomeca S.A. requested that we add the Arriel 2C2 engine model to the proposed AD applicability. The commenter referenced European Aviation Safety Agency (EASA) AD 2012–0124, dated July 9, 2012, issued to include the Arriel 2C2 engine model requiring the TU166 modification.

We agree. We added the Arriel 2C2 engine model to the AD applicability.

Request To Reduce Compliance Time

Sikorsky requested that we reduce the proposed AD compliance time for Arriel 2S2 engine models to within 100-cycles-in-service (CIS), instead of 500 CIS, and, add a calendar time limitation of ''but not later than September 30, 2012,'' based on the EASA AD having a compliance date of November 16, 2012. The commenter believes that the frequency of occurrence of the blade ruptures, when the risk is analyzed per the FAA Advisory Circular 39–8, targeting a reasonable risk, argues for an earlier TU166 modification.

We do not agree. The risk analyzed by Sikorsky had inputs that were too conservative. We did not change the 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.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 551 products of U.S. registry. We also estimate that it will take about 60 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,900 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $4,959,000.

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) 2011–13–05, Amendment 39–16728 (76 FR 40222, July 8, 2011), and adding the following new AD:

2012–18–18 Turbomeca S.A.: Amendment 39–17195; Docket No. FAA–2011–0115; Directorate Identifier 2010–NE–40–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 24, 2012.

(b) Affected ADs

This AD supersedes AD 2011–13–05, Amendment 39–16728 (76 FR 40222, July 8, 2011).

(c) Applicability

This AD applies to Turbomeca S.A. Arriel 2B, 2B1, 2S2, and 2C2 turboshaft engines not modified by TU166 modification.

(d) Unsafe Condition

This AD was prompted by reports of an accident involving a twin-engine helicopter powered by two Arriel 2S2 engines. We are issuing this AD to prevent rupture of a gas generator (GG) turbine blade, which could result in an uncommanded in-flight shutdown and a forced landing or accident.

(e) Compliance

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

(1) For Arriel 2B and 2B1 turboshaft engines, accomplish the TU166 modification in accordance with the instructions specified within Turbomeca Alert Mandatory Service Bulletin (MSB) No. A292 72 3166 Version B, dated September 20, 2010, when the GG Turbine is replaced or when the engine or Module M03 is going through overhaul or repair, or within 676 cycles-in-service (CIS) after the effective date of this AD, whichever occurs first.

(2) For Arriel 2S2 turboshaft engines, accomplish the TU166 modification in accordance with the instructions specified within Turbomeca Alert MSB No. A292 72 4166 Version A, dated March 23, 2012, when the GG Turbine is replaced or when the engine or Module M03 is going through overhaul or repair, or within 500 CIS after the effective date of this AD, whichever occurs first.

(3) For Arriel 2C2 turboshaft engines, accomplish the TU166 modification in accordance with the instructions specified within Turbomeca Alert MSB No. A292 72 5166 Version A, dated June 18, 2012, when the GG Turbine is replaced or when the engine or Module M03 is going through overhaul or repair or within 650 engine hours after the effective date of this AD, whichever occurs first.

(f) Credit for Actions Accomplished in Accordance With Previous Service Information

(1) For Arriel 2B and 2B1 turboshaft engines, if you performed the TU166 modification before the effective date of this AD using Turbomeca Alert MSB No. A292 72 3166 Version A, dated August 17, 2010, you met the requirements of paragraph (e)(1) of this AD.

(2) For Arriel 2C2 and 2S2 turboshaft engines, if you performed the TU166 modification before the effective date of this AD using Turbomeca Alert MSB No. A292 72 2166 Version A, dated March 30, 2009, Version B, dated September 4, 2009, Version C, dated June 15, 2010, Version D, dated July 28, 2010, Version E, dated October 4, 2010, Version F, dated May 13, 2011, or Version G, dated March 26, 2012, you met the requirements of paragraph (e)(2) or (e)(3) as applicable, of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov*.

(2) European Aviation Safety Agency AD 2012–0054, dated April 2, 2012, and AD 2012–0124, dated July 9, 2012, also pertain to this AD.

(i) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on October 24, 2012.

(i) Turbomeca Alert Mandatory Service Bulletin No. A292 72 4166 Version A, dated March 23, 2012.

(ii) Turbomeca Alert Mandatory Service Bulletin No. A292 72 5166 Version A, dated June 18, 2012.

(4) The following service information was approved for IBR on August 12, 2011 (76 FR 40222, July 8, 2011).

(i) Turbomeca Alert Mandatory Service Bulletin (MSB) No. A292 72 3166 Version B, dated September 20, 2010.

(ii) Reserved.

(5) For Turbomeca service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

(6) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(7) You may view this service information 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 Burlington, Massachusetts, on September 6, 2012.

Robert G. Mann,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–22536 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD; Amendment 39–17196; AD 2012–19–01]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, and IO–720 series reciprocating engines. That AD currently requires replacing certain crankshafts in the affected engines. This AD continues to require replacing certain crankshafts, corrects the start date of affected engine models in Lycoming Mandatory Service Bulletin (MSB) No. 569A to the start date in Supplement No. 1 to Lycoming MSB No. 569A, dated May 27, 2009, and

includes additional (formerly experimental) IO–390, AEIO–390, and AEIO–580 series engine models having affected crankshafts. This AD was prompted by Lycoming Engines discovering that the start date of affected engine models in MSB No. 569A is incorrect and the need to include additional engine models having the affected crankshafts. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

DATES: This AD is effective October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 24, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD as of November 3, 2006 (71 FR 57407, September 29, 2006).

ADDRESSES: For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; phone: 570 323–6181; fax: 570–327–7101, or on the internet at *www.Lycoming.Textron.com*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2006–20–09, amendment 39–14778 (71 FR 57407, September 29, 2006). That AD applies to the specified products. The SNPRM published in the **Federal Register** on April 6, 2012 (77 FR 20743). The original NPRM (76 FR 50152, August 12, 2011) proposed to retain the requirements of AD 2006–20–09 to replace certain crankshafts and to correct the start date of MSB No. 569A from March 1, 1997 to January 1, 1997, which is the start date in Supplement No. 1 to Lycoming MSB No. 569A, dated May 27, 2009. The SNPRM proposed to add IO–390, AEIO–390, and AEIO–580 series engine models that have the affected crankshafts to the applicability of the AD. The SNPRM also proposed to change Service Instruction No. 1009AS, dated May 25, 2006, to Service Instruction No. 1009AU, dated November 18, 2009, because Lycoming updated this service instruction. The changes to Service Instruction 1009AS do not affect the engine overhaul time.

Comments

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

Request To Determine if AD Applies to IO–360 Engine

A commenter asked if the AD applies to the Lycoming Engine IO–360–A3B6D. We reply that this engine is listed in Lycoming MSB No. 569A, so if the crankshaft serial number of that engine is also listed in Table 5 of MSB No. 569A, then the AD applies.

Changes to Previous Credit Paragraph

We reviewed our previous credit paragraph in the SNPRM (77 FR 20743, April 6, 2012) and found that not all the ADs and service bulletins (SBs) listed in paragraphs (f)(1) and (f)(2) of the SNPRM resolved the unsafe conditions. Accordingly, we changed the Credit for Previous Actions paragraphs, paragraphs (g)(1) and (g)(2) of this AD, retaining only Lycoming MSB No. 569A and AD 2006–20–09 (71 FR 57407, September 29, 2006) in the AD to resolve the unsafe condition and deleting all other ADs and SBs referenced in the SNPRM. Paragraphs (g)(1) and (g)(2) now read: ''(1) If you previously complied with AD 2006–20–09 (71 FR 57407, September 29, 2006), no further action is required. (2) If you previously accomplished Lycoming MSB No. 569A, no further action is required.''

Costs of Compliance Paragraph

We reviewed the cost estimate made in AD 2006–20–09 (71 FR 57407, September 29, 2006) when we added the new affected engine models to the SNPRM (77 FR 20743, April 6, 2012). We found that the cost estimate in AD 2006–20–09 included the number of affected engines worldwide rather than those installed only on aircraft of U.S. registry. We also found that the cost estimate in AD 2006–20–09 already included the engine models that we have now added to the applicability of this AD. Accordingly, we changed the number of affected engine models from 3,774 to 2,831 and the overall cost estimate from $60,384,000 to $45,288,000.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 2,831 engines installed on airplanes of U.S. registry. Because the AD compliance interval coincides with engine overhaul or other engine maintenance, we estimate no additional labor hours will be needed to comply with this AD. Required parts will cost about $16,000 per engine. Based on these figures, we estimate the total cost of the AD to be $45,288,000. Our estimate is independent of any possible warranty coverage.

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) 2006–20–09, Amendment 39–14778 (71 FR 57407), and adding the following new AD:

2012–19–01 Lycoming Engines: Amendment 39–17196; Docket No. FAA–2006–24785; Directorate Identifier 2006–NE–20–AD.

(a) Effective Date

This AD is effective October 24, 2012.

(b) Affected ADs

This AD supersedes AD 2006–20–09 (71 FR 57407, September 29, 2006).

(c) Applicability

This AD applies to Lycoming Engines (L)O–360, (L)IO–360, AEIO–360, IO–390, AEIO–390, O–540, IO–540, AEIO–540, (L)TIO–540, IO–580, AEIO–580, and IO–720 series reciprocating engines listed by engine model number and serial number in Table 1, Table 2, Table 3, or Table 4 of Lycoming Mandatory Service Bulletin (MSB) 569A, dated April 11, 2006, and those engines with crankshafts listed by crankshaft serial number in Table 5 of Lycoming MSB 569A, dated April 11, 2006. These applicable engines are manufactured new, rebuilt, overhauled, or had a crankshaft installed after January 1, 1997, according to Supplement No. 1 to Lycoming MSB No. 569A, dated May 27, 2009.

(d) Unsafe Condition

This AD results from Lycoming Engines discovering that the March 1, 1997 start date of affected engine models in Lycoming MSB No. 569A, is incorrect. This AD also results from the need to include the IO–390, AEIO–390, and AEIO–580 series engine models having affected crankshafts. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

(e) Compliance

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

(f) Engines For Which Action Is Required

If you did not previously comply with AD 2006–20–09 or with MSB No. 569A, do the following:

(1) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine serial number (S/N), and Table 5 of MSB No. 569A, dated April 11, 2006, lists your crankshaft S/N, replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(i) The time of the next engine overhaul as specified in Lycoming Service Instruction No. 1009AU, dated November 18, 2009; or

(ii) The next separation of the crankcase, or

(iii) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

(2) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, does not list your engine S/N, and Table 5 of MSB No. 569A does list your crankshaft S/N (an affected crankshaft was installed as a replacement), replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(i) The time of the next engine overhaul as specified in Lycoming Service Instruction No. 1009AU, dated November 18, 2009; or

(ii) The next separation of the crankcase, or

(iii) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

(g) Credit for Previous Actions

(1) If you previously complied with AD 2006–20–09 (71 FR 57407, September 29, 2006), no further action is required.

(2) If you previously accomplished Lycoming MSB No. 569A, no further action is required.

(3) If Lycoming Engines manufactured new, rebuilt, overhauled, or repaired your engine, or replaced the crankshaft in your engine before January 1, 1997, and you have not had the crankshaft replaced, no further action is required.

(4) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine S/N, and Table 5 of MSB No. 569A, dated April 11, 2006, does not list your crankshaft S/N, no further action is required.

(5) For engine model TIO–540–U2A, S/N L–4641–61A, no action is required.

(h) Prohibition Against Installing Certain Crankshafts

After the effective date of this AD, do not install any crankshaft that has a S/N listed in Table 5 of Lycoming MSB No. 569A, dated April 11, 2006, into any engine.

(i) Alternative Methods of Compliance (AMOC)

The Manager, New York Aircraft Certification Office, may approve AMOCs to this AD. Use the procedures in 14 CFR 39.19 to make your request. AMOCs approved for AD 2002–19–03 (67 FR 59139, September 20, 2002) and AD 2006–20–09 (71 FR 57407, September 29, 2006) are approved as AMOCs for this AD.

(j) Related Information

For more information about this AD, contact Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov*.

(k) Material Incorporated by Reference

(1) 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.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on October 24, 2012.

(i) Lycoming Service Instruction No. 1009AU, dated November 18, 2009.

(ii) Lycoming Mandatory Service Bulletin, Supplement No. 1 to Service Bulletin No. 569A, dated May 27, 2009.

(4) The following service information was approved for IBR on November 3, 2006 (71 FR 57407, September 29, 2006).

(i) Lycoming Mandatory Service Bulletin No. 569A, dated April 11, 2006.

(ii) Reserved.

(5) For service information identified in this AD, contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; phone: 570 323–6181; fax: 570–327–7101, or on the Internet at *www.Lycoming.Textron.com*.

(6) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(7) You may view this service information 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 Burlington, Massachusetts, on August 27, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Directorate, Aircraft Certification Service.

[FR Doc. 2012–22924 Filed 9–18–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 120813330–2330–01]

RIN 0694–AF74

Addition of Certain Persons to the Entity List; Removal of Person From the Entity List Based on Removal Request; and Implementation of Entity List Annual Review Changes

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding six persons under eight entries to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under Iran and the United Arab Emirates (U.A.E.).

In addition, this rule removes one person from the Entity List, as the result of a request for removal submitted by the person, a review of information provided in the removal request in accordance with the EAR, and further review conducted by the End-User Review Committee (ERC).

Lastly, this rule amends the Entity List on the basis of the annual review conducted by the ERC. The ERC conducts annual reviews to determine if any entries on the Entity List should be removed or modified. This rule reflects the results of the annual review of entities located in Belarus, Canada, the People's Republic of China (China), Egypt, Germany, Hong Kong, Ireland, Israel, Kuwait, Lebanon, Malaysia, Pakistan, Singapore, South Africa, Taiwan, and the United Kingdom. On the basis of the annual review, this rule removes fourteen entries, adds three entries, and amends thirty-six other entries. The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective September 19, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from BIS and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List decisions

Additions to the Entity List

This rule implements the decision of the ERC to add six persons under eight entries to the Entity List on the basis of Section 744.11 (license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The eight entries, two of which are alternate addresses of two of the persons being added to the Entity List, consist of two entries in Iran and six entries in the U.A.E.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)–(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The six persons being added to the Entity List under this rule have been determined by the ERC to be involved in activities that are contrary to the national security or foreign policy interests of the United States. Two of the persons being added to the Entity List under this rule, Seyed Mahdi Mousavi (''Mousavi'') and his company, Seyed Mousavi Trading, are located in the U.A.E. and in Iran. BIS's investigation of Mousavi and his company, Seyed Mousavi Trading, indicates that he, individually, and by and through his company, knowingly acquired U.S.-origin items for transshipment to Iran through the U.A.E. and Hong Kong. Further, the investigation indicates that the shipments to Iran included shipments to a person on the Denied Persons List (see section 764.3(a)(2) of the EAR). Therefore, pursuant to Section 744.11(b)(5) of the EAR, the ERC determined that Mousavi and Seyed Mousavi Trading are knowingly and willfully engaging in the transshipment of U.S.-origin equipment subject to the EAR, without the required Department of Commerce or Department of the Treasury, Office of Foreign Assets Control (OFAC) export licenses, for use in Iran in violation of the embargo against Iran as specified in the Iranian Transactions Regulations (31 CFR Part 560). Iran has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism. In addition, pursuant to paragraph (b) of Supplement No. 1 to Part 764 of the EAR, no person may, directly or indirectly, export or reexport any item subject to the EAR to or on behalf of a denied person.

The other four persons being added to the Entity List under this rule, Fajr Almadeena Electronics (FAE) and its owners, Alex Nouri Zadeh, Mohammad Nayeb, and Jamal Hasan are all located in the U.A.E. BIS's investigation indicates that FAE was listed as a recipient of hundreds of U.S.-origin items. Although FAE claims that the items it receives remain in the U.A.E. and that it is the end-user of record, FAE principals have not been able to provide information on the items' current location or end-use. Moreover, BIS's investigation indicates that FAE's office space is inappropriate for end-use in situ of the items shipped. Therefore, pursuant to Section 744.11(b)(4) and (b)(5) of the EAR, the ERC determined

that FAE, Alex Nouri Zadeh, Mohammad Nayeb, and Jamal Hasan are unreliable recipients of U.S.-origin items and may be diverting such items through the U.A.E. to Iran, without the required Department of Commerce or OFAC export licenses, for use in Iran in violation of the embargo against Iran as specified in the Iranian Transactions Regulations (31 CFR Part 560). As noted above, Iran has been designated by the Secretary of State as a country that has repeatedly provided support for acts of international terrorism.

For all eight entries for the six persons being added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following six persons under eight entries to the Entity List:

Iran

(1) *Seyed Mahdi Mousavi,* BLK 6, No. 12 Beside Gilan Street, Rodstar Street, Under Hafez Bridge, Tehran, Iran; *and* No. 10–6th Floor Iranian Trade Center, Valiasr Square, Tehran, Iran (See alternate addresses under U.A.E.); *and*

(2) *Seyed Mousavi Trading,* a.k.a., the following two aliases:

—Hitech Computer Peripherals; *and*
—Hitech Corporation.

BLK 6, No. 12 Beside Gilan Street, Rodstar Street, Under Hafez Bridge, Tehran, Iran; *and* No. 10–6th Floor Iranian Trade Center, Valiasr Square, Tehran, Iran (See alternate addresses under U.A.E.).

United Arab Emirates

(1) *Alex Nouri Zadeh,* a.k.a. the following three aliases:

—Alex Banai;
—Alex Norry; *and*
—Nouri Zadeh,

No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.;

(2) *Fajr Almadeena Electronics,* No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.

(3) *Jamal Hasan,* a.k.a. the following alias:

—Jamal Haji,

No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.

(4) *Mohammad Nayeb,* No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.

(5) *Seyed Mahdi Mousavi,* P.O. Box 49465, Dubai, U.A.E.; *and,* P.O. Box 7941, Dubai, U.A.E. (See alternate addresses under Iran); *and*

(6) *Seyed Mousavi Trading,* a.k.a., the following two aliases:

—Hitech Computer Peripherals; *and*
—Hitech Corporation.

P.O. Box 49465, Dubai, U.A.E.; *and* P.O. Box 7941, Dubai, U.A.E (See alternate addresses under Iran).

Removal From the Entity List

This rule implements a decision of the ERC to remove one person, Raaziq International (Pvt.) Ltd., located in Pakistan, from the Entity List as a result of the person's request for removal from the Entity List. Based upon the review of the information provided in the removal request in accordance with section 744.16 (Procedure for requesting removal or modification of an Entity List entity), and after review by the ERC's member agencies, the ERC determined that this person should be removed from the Entity List.

The ERC decision to remove this person took into account this person's cooperation with the U.S. Government, as well as this person's assurances of future compliance with the EAR. In accordance with section 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to this person, informing this entity of the ERC's decision to remove it from the Entity List. This final rule implements the decision to remove the following person located in Pakistan from the Entity List:

Pakistan

(1) *Raaziq International (Pvt.) Ltd.,* House Number 32, F–2, Khusal Khan Khattak Road, University Town, Peshawar, Pakistan.

Annual Review of the Entity List

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List. This rule implements the results of the annual review for entities located in Belarus, China, Egypt, Hong Kong, Kuwait, Malaysia, Pakistan, Singapore and South Africa. The entities located in Canada, Germany, Ireland, Israel, Lebanon, Taiwan, and the United Kingdom were also reviewed by the ERC, but no additional changes are being made to those entries as a result of the annual review of the Entity List.

1. Removals From the Entity List on the Basis of Annual Reviews

This rule removes fourteen entries from the Entity List on the basis of the annual review of the Entity List. The persons removed were determined to no longer meet the criteria for inclusion on the Entity List. Specifically, this rule implements the decision of the ERC to remove one person located in China, three persons located in Egypt, eight persons located in Hong Kong, and two persons located in Kuwait, as follows:

China

(1) *Tracy Little,* Room 1104, North Tower Yueziu City Plaza, No. 445 Dong Feng Zhong Rd., Guangzhou, China.

Egypt

(1) *H Logic,* Behind 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt; *and* 11 Abd El-Hamid Shoman St., Nasser City, Cairo;

(2) *Hesham Yehia,* Behind 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt; *and*

(3) *Najeeb Al Awadhi,* 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt.

Hong Kong

(1) *Amy So,* Room 1701, New Commerce Centre, 19 On Sum St., Siu Lek Yuen, Shatin, N.T., Hong Kong;

(2) *Frank Lam,* 1206–7, 12/F New Victory House, Hong Kong;

(3) *Gary Chan,* 4/F, Chinabest International Centre, 8 Kwai On Rd., Kwai Chung, N.T., Hong Kong;

(4) *Green Channel Electronics Company,* Unit 902, Ricky Center, 36 Chong Yip St., Kwun Tong, Kowloon, Hong Kong;

(5) *Techlink Electronics,* Unit 5, 18/F, Laurels Industrial Centre, 32 Tai Yau St., San Po Kong, Kowloon, Hong Kong;

(6) *TLG Electronics,* Room 1701, New Commerce Centre, 19 On Sum St., Siu Lek Yuen, Shatin, N.T., Hong Kong;

(7) *Unite Chance Technology Company,* Workshop A14, 5/F, Block A Sheung Shui Plaza, 3 Ka Fu Close Sheung Shui, N.T., Hong Kong; *and*

(8) *Wing Shing Computer Components Company (H.K.) Ltd.,* Unit E, 9/F, Lladro Centre, 72 Hoi Yuen Rd., Kwon Tong, Kin, Hong Kong.

Kuwait

(1) *Advanced Technology General Trading Company,* Hawalli, Bin Khaldoun St., Fadhalah Complex, Mizzanin, Office #4, P.O. Box 22682, Safat, 13087, Kuwait. (See alternate address under U.A.E.); *and*

(2) *Abubakr Abuelazm,* Hawalli, Bin Khaldoun St., Fadhalah Complex, Mizzanin, Office #4, P.O. Box 22682, Safat, 13087, Kuwait (See alternate address under U.A.E.).

The two entities removed from Kuwait are also listed in the U.A.E.; BIS is not removing the two U.A.E. listings from the Entity List at this time. The ERC will evaluate those entries as part of the annual review of the entities located in the U.A.E. The removal of the above-referenced fourteen entities on the basis of annual review of the Entity List, and the removal of the one entity referenced above on the basis of a Section 744.16 removal request that was approved by the ERC, eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to these fifteen entities. However, the removal of these fifteen entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

2. Modifications to the Entity List on the Basis of the Annual Review

On the basis of decisions made by the ERC during the annual review, in addition to the removals described above, this rule amends thirty-six entries currently on the Entity List. The amended entries consist of three entries under Belarus, twelve entries under China, three entries under Malaysia, twelve entries under Pakistan, one entry under Singapore, and five entries under South Africa. The amendments clarify the relationship between listed persons and/or provide alternate addresses, alternate spellings and acronyms and/or aliases for the names of the listed persons, as follows:

Belarus

(1) *Belmicrosystems Research and Design Center,* Office 313, 12 Korzhenevsky Street, 20108 Minsk, Republic of Belarus; *and* Korjenevsky Str., 12, Minsk, 220108, Republic of Belarus; *and* 12, Korzhenevskogo Str., Minsk, 220108, Republic of Belarus;

(2) *SOE Semiconductor Devices Factory,* Office 313, 12 Korzhenevsky Street, 20108 Minsk, Republic of Belarus; *and* Korjenevsky Str., 12, Minsk, 220108, Republic of Belarus; *and* 12, Korzhenevskogo Str., Minsk, 220108, Republic of Belarus; *and*

(3) *Vasili Kuntsevich,* Office 313, 12 Korzhenevsky Street, 20108 Minsk, Republic of Belarus; *and* Korjenevsky Str., 12, Minsk, 220108, Republic of Belarus; *and* 12, Korzhenevskogo Str., Minsk, 220108, Republic of Belarus.

China

(1) *33 Institute,* a.k.a., the following three aliases:

—Beijing Automation Control Equipment Institute (BACEI);
—Beijing Institute of Automatic Control Equipment, China Haiying Electromechanical Technology Academy; *and*
—No. 33 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC).

Yungang, Fengtai District, Beijing;

(2) *35 Institute,* a.k.a., the following four aliases:

—Beijing Hangxing Machine Building Corporation;
—Beijing Huahang Radio Measurements Research Institute, China Haiying Electronic Mechanical Technical Research Academy;
—Huahang Institute of Radio Measurement; *and*
—No. 35 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC);

(3) *54th Research Institute of China,* a.k.a., the following three aliases:

—China Electronics Technology Group Corp. (CETC) 54th Research Institute;
—Communication, Telemetry and Telecontrol Research Institute (CTI); *and*
—Shijiazhuang Communication Observation and Control Technology Institute;

(4) *Beijing Aerospace Automatic Control Institute (BICD),* a.k.a., the following four aliases:

—12th Research Institute China Academy of Launch Vehicle Technology (CALT);
—Beijing Institute of Space Automatic Control;
—Beijing Spaceflight Autocontrol Research Institute; *and*
—China Aerospace Science and Technology Corp First Academy 12th Research Institute.

51 Yong Ding Road, Beijing; *and* No. 50 Yongding Road, Haidian District, Beijing, China, 100854;

(5) *Chinese Academy of Engineering Physics,* a.k.a., the following seventeen aliases:

—Ninth Academy;
—Southwest Computing Center;
—Southwest Institute of Applied Electronics;
—Southwest Institute of Chemical Materials;
—Southwest Institute of Electronic Engineering;
—Southwest Institute of Environmental Testing;
—Southwest Institute of Explosives and Chemical Engineering;
—Southwest Institute of Fluid Physics;
—Southwest Institute of General Designing and Assembly;
—Southwest Institute of Machining Technology;
—Southwest Institute of Materials;
—Southwest Institute of Nuclear Physics and Chemistry (a.k.a., China Academy of Engineering Physics (CAEP)'s 902 Institute);
—Southwest Institute of Research and Applications of Special Materials Factory;
—Southwest Institute of Structural Mechanics;

(all of preceding located in or near Mianyang, Sichuan Province)

—The High Power Laser Laboratory, Shanghai;
—The Institute of Applied Physics and Computational Mathematics, Beijing; *and*
—901 Institute (P.O. Box 523 Chengdu, 6100003);

(6) *First Department, Chinese Academy of Launch Vehicle Technology (CALT),* a.k.a., the following three aliases:

—1st General Design Department (a.k.a., Planning Department No 1) of the China Aerospace Science & Technology Corporation's First Academy (CALT);
—Beijing Institute of Astronautic Systems Engineering; *and*
—Beijing Institute of Space System Engineering.

1 South Dahongmen Road, Fengtai District, Beijing 100076;

(7) *Northwest Institute of Nuclear Technology in the Science Research (NINTF),* Xi'an, Shanxi; *and* P.O. Box 69–12, Xi'an, Shaanxi Province 710024;

(8) *Northwestern Polytechnical University,* a.k.a., the following three aliases:

—Northwestern Polytechnic University;
—Northwest Polytechnic University; *and*
—Northwest Polytechnical University.

127 Yonyi Xilu, Xi'an 71002 Shaanxi, China; *and* Youyi Xi Lu, Xi'an, Shaanxi, China; *and* No. 1 Bianjia Cun, Xi'an; *and* West Friendship Rd. 59, Xi'an; *and* 3 10 W Apt 3, Xi'an;

(9) *Shanghai Institute of Space Power Sources,* a.k.a., the following three aliases:

—811th Research Institute, 8th Academy, China Aerospace Science and Technology Corp. (CASC);
—Shanghai Space Energy Research Institute; *and*
—Shanghai Space Power Supply Research Institute.

388 Cang Wu Road, Shanghai; *and* Dongchuan Rd., 2965 Shanghai;

(10) *Southwest Research Institute of Electronics Technology,* a.k.a., the following three aliases:

—10th Research Institute of China Electronic Technology Group Corp (CETC);
—CETC 10th Research Institute; *and*
—Southwest Institute of Electronic Technology (SWIET).

No. 6 Yong Xin Street, Chengdu; *and* No. 90 Babao Street, Chengdu; *and* 48 Chadianzi Street East, Jinniu District, Chengdu, 610036;

(11) *Xi'an Research Institute of Navigation Technology,* a.k.a., the following two aliases:

—20th Research Institute of China Electronic Technology Group Corp (CETC); *and*
—CETC 20th Research Institute.

1 Baisha Rd., Xi'an, Shaanxi; *and*

(12) *Xiangdong Machinery Factory, within the China Aerospace Science and Industry Corp's (CASIC) Third Academy,* a.k.a., the following two aliases:

—China Haiying Electromechanical Technology Academy; *and*
—China Haiying Science & Technology Corporation (a.k.a., the following four aliases: 239 Factory; Beijing Xinghang Electromechanical Equipment Factory; Beijing Hangxing Machinery Manufacturing Corporation; *and* Hangxing Machine Building Company).

Malaysia

(1) *Eco Biochem Sdn Bhd,* No. 15, Jalan PJS 11/16, Taman Bandar Sunway, 46150 Petaling Jaya, Selangor D.E., Malaysia;

(2) *Festsco Marketing Sdn Bhd,* 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; *and* Suite D23, Tkt. 2, Plaza Pekeliling, Jalan Tun Razak, Kuala Lumpur, Wilayah Persekkutuan, Malaysia; *and*

(3) *VTE Industrial Automation Sdn Bhd,* 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; *and* 45–02, Jalan Kenari 19A, Puchong Jaya, Puchong, Selangor 47100 Malaysia.

Pakistan

(1) *Abdul Qader Khan Research Laboratories (AQKRL),* a.k.a., the following seven aliases:

—Abdul Qadeer Khan Research Laboratories;
—Dr. A.Q. Khan Research Laboratories;
—Engineering Research Laboratories (ERL);
—Institute of Industrial Control Systems (IICS);
—Kahuta Nuclear Facility;
—Kahuta Research Facility; *and*
—Khan Research Laboratories (KRL).

Dhoke Nusah, Dakhli Gangal, Near Chatri Chowk, P.O. Box 1398, Rawalpindi 46000, Pakistan; *and* P.O. Box 852, Rawalpindi, Pakistan; *and* P.O. Box 502, Kahuta, Pakistan; *and* 24 Mauve Area G 9/1, GPO Box 2891, Islamabad;

(2) *Al Technique Corporation of Pakistan, Ltd. (ATCOP),* 4th Floor, Dodhy Plaza, 52 Jinnah Avenue, P.O. Box 1878, Islamabad, Pakistan;

(3) *Allied Trading Co.,* a.k.a., the following alias:

—UCB Arcade.

2, Wazir Mansion, main Aiwan-e-tijarat Road, Boulton Market, Karachi—74000, Karachi, Pakistan (See alternate address under UCB Arcade in Uganda);

(4) *Defense Science and Technology Organization (DESTO),* a.k.a., the following two aliases:

—Defense Science and Technology Center; *and*
—Chaklala Defense Science and Technology Organization.

182 Sir Syed Road, Chaklala Cantt, Rawalpindi 46200, Pakistan; *and* Headquarters, Chakklala Cantt, Rawalpindi, 46200, Pakistan;

(5) *High Technologies, Ltd. (HTL),* a.k.a., the following alias:

—High Technology, Ltd.,

Islamabad;

(6) *Machinery Master Enterprises Ltd. (MME),* Islamabad;

(7) *Maple Engineering Pvt. Ltd. Consultants, Importers and Exporters,* Islamabad;

(8) *Pakistan Atomic Energy Commission (PAEC),* a.k.a., the following alias:

—Power Plant Workshops,

P.O. Box 1114, Islamabad; *and* the following three subordinate entities:

—National Development Complex (NDC), a.k.a., the following two aliases:
  —National Development Centre; *and*
  —National Defense Complex, Fateh Jang, Punjab, Rawalpindi, Pakistan; *and* P.O. Box 2216, Islamabad, Pakistan;
—Pakistan Institute for Nuclear Science and Technology (PINSTECH), Nilore, Islamabad;
—Nuclear reactors (including power plants), fuel reprocessing and enrichment facilities, all uranium processing, conversion and enrichment facilities, heavy water production facilities and any collocated ammonia plants.

(9) *People's Steel Mills,* Javedan Nagar, Manghopir Road, Karachi 75890, Pakistan;

(10) *Space and Upper Atmosphere Research Commission (SUPARCO),* a.k.a., the following alias:

—Space and Upper Atmospheric Research Commission.

Sector 28, Gulzar-e-Hijiri, Off University Road, P.O. Box 8402, Karachi 75270;

(11) *Wah Chemical Product Plant,* a.k.a., the following alias:

—Wah Nobel Chemicals Limited,

Wah Cantonment, Rawalpindi, Pakistan; *and*

(12) *Wah Munitions Plant,* Wah Cantonment, Rawalpindi, Pakistan.

Singapore

(1) *Cyberinn PTE LTD,* a.k.a., the following alias:

—Index Consultancy & Services PTE LTD.

1 Rochor Canal Road, #06–07 Sim Lim Square, 188504, Singapore.

South Africa

(1) *Gunther Migeotte,* 1 River Street, Rosebank, Cape Town, 7700, South Africa; *and* P.O. Box 36623, Menlo Park, 0102, South Africa; *and* 16 Manu Rua, 262 Sprite Avenue, Faerie Glen, 0081, South Africa; *and* Suite 17–106, The Waverley Business Park, Wyecroft Rd., Mowbray, Cape Town, 7925, South Africa (See alternate address under Norway);

(2) *Icarus Marine (Pty) Ltd.,* 1 River Street, Rosebank, Cape Town, South Africa; *and* Suite 17–106, The Waverley

Business Park, Wyecroft Rd., Mowbray, Cape Town, 7925, South Africa;

(3) *Ralph Brucher,* P.O. Box 9523, Centurion 0046, South Africa; *and* Unit 4, Techni Park East, Alwyn Street, Meyerspark Silverton, Pretoria, Gauteng, South Africa; *and* Batter St, Techniec Park East, Silverton, Pretoria, 0184, South Africa; *and* 26 Jakaranda St, Centurion, Gauteng 0157, South Africa; *and* Jacaranda St, Hennopspark Ext 7, Centurion, South Africa;

(4) *Scavenger Manufacturing (Pty) Ltd.,* P.O. Box 288, Silverton, Pretoria 0127, South Africa; *and* Unit 4, Techni Park East, Alwyn Street, Meyerspark Silverton, Pretoria, Gauteng, South Africa; *and* Batter St, Techniec Park East, Silverton, Pretoria, 0184, South Africa; *and* 26 Jakaranda St, Centurion, Gauteng 0157, South Africa; *and* Jacaranda St, Hennopspark Ext 7, Centurion, South Africa; *and* P.O. Box 9523, Centurion 0046, South Africa; *and*

(5) *Shawn Hugo De Villiers,* 1 River Street, Rosebank, Cape Town 7700, South Africa; *and* Myburgii Street, Somerset West, Cape Town, South Africa; *and* Suite 17–106, The Waverley Business Park, Wyecroft Rd., Mowbray, Cape Town, 7925, South Africa.

3. Additions to the Entity List

On the basis of decisions made by the ERC during the annual review of the Entity List, in addition to the removals and modifications described above, this rule adds two separate entries under China for two entities formerly listed on the Entity List under China as aliases of the Chinese Academy of Engineering Physics: Sichuan University and University of Electronic Science and Technology of China. Also on the basis of decisions made by the ERC during the annual review of the Entity List, this rule adds one entry under Uganda, UCB Arcade, as an alternate address for Allied Trading Co., an entity listed on the Entity List under Pakistan, therefore creating a new country listing on the Entity List. The ERC determined that the licensing requirements and licensing review policies for all three of these entries should mirror those in entries in which they were previously located. Therefore, for the entries for Sichuan University and University of Electronic Science and Technology of China, the specified license requirement is all items subject to the EAR and the established license review policy is case-by-case basis. For UCB Arcade, the specified license requirement is all items subject to the EAR and the established license review policy is presumption of denial. The three additions to the Entity List as a result of the annual review are as follows:

China

(1) *Sichuan University,* No. 24 South Section 1, Yihuan Road, Chengdu, China, 610065; *and* No. 29 Jiuyanqiao Wangjiang Road, Chengdu, China, 610064; *and* People's South Road, Chengdu, China, 610041; *and* Shuangliu County, Chuanda Road, Chengdu, China, 610207; *and*

(2) *University of Electronic Science and Technology of China,* No. 4, 2nd Section, North Jianshe Road, Chengdu, 610054.

Uganda

(1) *UCB Arcade,* a.k.a., the following alias:

—Allied Trading Co., P.O. Box 5999, Kampala, Uganda (See alternate address under Allied Trading Co. in Pakistan).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

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 15, 2012, 77 FR 49699 (August 16, 2012), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration 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, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

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

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. § 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses,

and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

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

■ (a) By revising under Belarus, three Belarusian entities;

■ (b) By removing under China, the Chinese entity: ''Tracy Little, Room 1104, North Tower Yueziu City Plaza, No. 445 Dong Feng Zhong Rd., Guangzhou, China.'';

■ (c) By revising under China, twelve Chinese entities;

■ (d) By adding under China, in alphabetical order, two Chinese entities for ''Sichuan University'' and ''University of Electronic Science and Technology of China'';

■ (e) By removing under Egypt, three Egyptian entities: ''H Logic, Behind 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt; and 11 Abd El-Hamid Shoman St., Nasser City, Cairo.''; ''Hesham Yehia, Behind 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt.''; and ''Najeeb Al Awadhi, 14 Mahmoud Sedky St., El Ekbal, Alexandria, Egypt.'';

■ (f) By removing under Hong Kong, eight Hong Kong entities: ''Amy So, Room 1701, New Commerce Centre, 19 On Sum St., Siu Lek Yuen, Shatin, N.T., Hong Kong.''; ''Frank Lam, 1206–7, 12/F New Victory House, Hong Kong.''; ''Gary Chan, 4/F, Chinabest International Centre, 8 Kwai On Rd., Kwai Chung, N.T., Hong Kong.''; ''Green Channel Electronics Company, Unit 902, Ricky Center, 36 Chong Yip St., Kwun Tong, Kowloon, Hong Kong.''; ''Techlink Electronics, Unit 5, 18/F, Laurels Industrial Centre, 32 Tai Yau St., San Po Kong, Kowloon, Hong Kong.''; ''TLG Electronics, Room 1701, New Commerce Centre, 19 On Sum St., Siu Lek Yuen, Shatin, N.T., Hong Kong.''; ''Unite Chance Technology Company, Workshop A14, 5/F, Block A Sheung Shui Plaza, 3 Ka Fu Close Sheung Shui, N.T., Hong Kong''; *and* ''Wing Shing Computer Components Company (H.K.) Ltd., Unit E, 9/F, Lladro Centre, 72 Hoi Yuen Rd., Kwon Tong, Kin, Hong Kong.'';

■ (g) By adding under Iran, in alphabetical order, two Iranian entities;

■ (h) By removing the destination of Kuwait under the Country column and the two Kuwaiti entities: ''Advanced Technology General Trading Company, Hawalli, Bin Khaldoun St., Fadhalah Complex, Mizzanin, Office #4, P.O. Box 22682, Safat, 13087, Kuwait.''; and ''Abubakr Abuelazm, Hawalli, Bin Khaldoun St., Fadhalah Complex, Mizzanin, Office #4, P.O. Box 22682, Safat, 13087, Kuwait.'';

■ (i) By revising, under Malaysia, three Malaysian entities;

■ (j) By removing under Pakistan, the Pakistani entity: ''Raaziq International (Pvt.) Ltd., House Number 32, F–2, Khusal Khan Khattak Road, University Town, Peshawar, Pakistan.'';

■ (k) By revising under Pakistan, twelve Pakistani entities;

■ (l) By revising under Singapore, one Singaporean entity;

■ (m) By revising under South Africa, five South African entities;

■ (n) By adding, in alphabetical order, the destination of Uganda under the Country column and one Ugandan entity;

■ (o) By removing, under United Arab Emirates, the parenthetical phrase ''(See alternate address under Kuwait)'' from two entities, Abubakr Abuelazm and Advanced Technology General Trading Company; and

■ (p) By adding under United Arab Emirates, in alphabetical order, six Emirati entities.

The additions and revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
Belarus	Belmicrosystems Research and Design Center, Office 313, 12 Korzhenevsky Street, 20108 Minsk, Republic of Belarus; *and* Korjenevsky Str., 12, Minsk, 220108, Republic of Belarus; *and* 12, Korzhenevskogo Str., Minsk, 220108, Republic of Belarus.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
	SOE Semiconductor Devices Factory, Office 313, 12 Korzhenevsky Street, 20108 Minsk, Republic of Belarus; *and* Korjenevsky Str., 12, Minsk, 220108, Republic of Belarus; *and* 12, Korzhenevskogo Str., Minsk, 220108, Republic of Belarus.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Vasili Kuntsevich, Office 313, 12 Korzhenevsky Street, 20108 Minsk, Republic of Belarus; *and* Korjenevsky Str., 12, Minsk, 220108, Republic of Belarus; *and* 12, Korzhenevskogo Str., Minsk, 220108, Republic of Belarus.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
China, People's Republic of				
*	* *	*	* *	*
	33 Institute, a.k.a., the following three aliases: —Beijing Automation Control Equipment Institute (BACEI); —Beijing Institute of Automatic Control Equipment, China Haiying Electromechanical Technology Academy; *and* —No. 33 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC). Yungang, Fengtai District, Beijing.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are "999", *e.g.,* XX999.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
	35 Institute, a.k.a., the following four aliases: —Beijing Hangxing Machine Building Corporation; —Beijing Huahang Radio Measurements Research Institute, China Haiying Electronic Mechanical Technical Research Academy; —Huahang Institute of Radio Measurement; *and* —No. 35 Research Institute of the Third Academy of China Aerospace Science and Industry Corp (CASIC).	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are "999", *e.g.,* XX999.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
	54th Research Institute of China, a.k.a., the following three aliases: —China Electronics Technology Group Corp. (CETC) 54th Research Institute; —Communication, Telemetry and Telecontrol Research Institute (CTI); *and* —Shijiazhuang Communication Observation and Control Technology Institute.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are "999", *e.g.,* XX999.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Beijing Aerospace Automatic Control Institute (BICD), a.k.a., the following four aliases: —12th Research Institute China Academy of Launch Vehicle Technology (CALT); —Beijing Institute of Space Automatic Control; —Beijing Spaceflight Autocontrol Research Institute; *and* —China Aerospace Science and Technology Corp First Academy 12th Research Institute. 51 Yong Ding Road, Beijing; *and* No. 50 Yongding Road, Haidian District, Beijing, China, 100854.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
	Chinese Academy of Engineering Physics, a.k.a., the following seventeen aliases: —Ninth Academy; —Southwest Computing Center; —Southwest Institute of Applied Electronics; —Southwest Institute of Chemical Materials; —Southwest Institute of Electronic Engineering; —Southwest Institute of Environmental Testing; —Southwest Institute of Explosives and Chemical Engineering; —Southwest Institute of Fluid Physics; —Southwest Institute of General Designing and Assembly; —Southwest Institute of Machining Technology; —Southwest Institute of Materials; —Southwest Institute of Nuclear Physics and Chemistry (a.k.a., China Academy of Engineering Physics (CAEP)'s 902 Institute); —Southwest Institute of Research and Applications of Special Materials Factory; —Southwest Institute of Structural Mechanics; (all of preceding located in or near Mianyang, Sichuan Province) —The High Power Laser Laboratory, Shanghai; —The Institute of Applied Physics and Computational Mathematics, Beijing; *and* —901 Institute (P.O. Box 523 Chengdu, 6100003).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97. 66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 76 FR 21628, 4/18/11. 76 FR 50407, 8/15/11. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	First Department, Chinese Academy of Launch Vehicle Technology (CALT), a.k.a., the following three aliases: —1st General Design Department (a.k.a., Planning Department No 1) of the China Aerospace Science & Technology Corporation's First Academy (CALT); —Beijing Institute of Astronautic Systems Engineering; *and* —Beijing Institute of Space System Engineering. 1 South Dahongmen Road, Fengtai District, Beijing 100076..	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Northwest Institute of Nuclear Technology in the Science Research (NINTF), Xi'an, Shanxi; *and* P.O. Box 69–12, Xi'an, Shaanxi Province 710024.	For all items subject to the EAR.	See § 744.2 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	Federal Register citation
	Northwestern Polytechnical University, a.k.a., the following three aliases: —Northwestern Polytechnic University; —Northwest Polytechnic University; *and* —Northwest Polytechnical University. 127 Yonyi Xilu, Xi'an 71002 Shaanxi, China; *and* Youyi Xi Lu, Xi'an, Shaanxi, China; *and* No. 1 Bianjia Cun, Xi'an; *and* West Friendship Rd. 59, Xi'an; *and* 3 10 W Apt 3, Xi'an.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are "999", *e.g.,* XX999.	See § 744.3(d) of this part	66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Shanghai Institute of Space Power Sources, a.k.a., the following three aliases: —811th Research Institute, 8th Academy, China Aerospace Science and Technology Corp. (CASC); —Shanghai Space Energy Research Institute; *and* —Shanghai Space Power Supply Research Institute. 388 Cang Wu Road, Shanghai; *and* Dongchuan Rd., 2965 Shanghai.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part	64 FR 28909, 5/28/99. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
	Sichuan University, No. 24 South Section 1, Yihuan Road, Chengdu, China, 610065; *and* No. 29 Jiuyanqiao Wangjiang Road, Chengdu, China, 610064; *and* People's South Road, Chengdu, China, 610041; *and* Shuangliu County, Chuanda Road, Chengdu, China, 610207.	For all items subject to the EAR.	Case-by-case basis.	77 FR 58006, 9/19/12.
	Southwest Research Institute of Electronics Technology, a.k.a., the following three aliases: —10th Research Institute of China Electronic Technology Group Corp (CETC); —CETC 10th Research Institute; *and*. —Southwest Institute of Electronic Technology (SWIET); No. 6 Yong Xin Street, Chengdu; *and* No. 90 Babao Street, Chengdu; *and* 48 Chadianzi Street East, Jinniu District, Chengdu, 610036.	For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are "999", *e.g.,* XX999.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	University of Electronic Science and Technology of China, No. 4, 2nd Section, North Jianshe Road, Chengdu, 610054.	For all items subject to the EAR.	Case-by-case basis.	77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Xi'an Research Institute of Navigation Technology, a.k.a., the following two aliases: —20th Research Institute of China Electronic Technology Group Corp (CETC); *and* —CETC 20th Research Institute. Baisha Rd., Xi'an, Shaanxi.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
	Xiangdong Machinery Factory, within the China Aerospace Science and Industry Corp's (CASIC) Third Academy, a.k.a., the following two aliases: —China Haiying Electromechanical Technology Academy; *and* —China Haiying Science & Technology Corporation (a.k.a., the following four aliases: 239 Factory; Beijing Xinghang Electromechanical Equipment Factory; Beijing Hangxing Machinery Manufacturing Corporation; *and* Hangxing Machine Building Company).	For all items subject to the EAR.	See § 744.3(d) of this part	66 FR 24267, 5/14/01. 75 FR 78883, 12/17/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
Iran				
*	* *	*	* *	*
	Seyed Mahdi Mousavi, BLK 6, No. 12 Beside Gilan Street, Rodstar Street, Under Hafez Bridge, Tehran, Iran; *and* No. 10–6th Floor Iranian Trade Center, Valiasr Square, Tehran, Iran (See alternate addresses under U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
	Seyed Mousavi Trading, a.k.a., the following two aliases: —Hitech Computer Peripherals; *and* —Hitech Corporation. BLK 6, No. 12 Beside Gilan Street, Rodstar Street, Under Hafez Bridge, Tehran, Iran; *and* No. 10–6th Floor Iranian Trade Center, Valiasr Square, Tehran, Iran (See alternate addresses under U.A.E.).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*
Malaysia				
*	* *	*	* *	*
	Eco Biochem Sdn Bhd, No. 15, Jalan PJS 11/16, Taman Bandar Sunway, 46150 Petaling Jaya, Selangor D.E., Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54508, 9/22/08. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Festsco Marketing Sdn Bhd, 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; *and* Suite D23, Tkt. 2, Plaza Pekeliling, Jalan Tun Razak, Kuala Lumpur, Wilayah Persekkutuan, Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54508, 9/22/08. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	VTE Industrial Automation Sdn Bhd, 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; *and* 45–02, Jalan Kenari 19A, Puchong Jaya, Puchong, Selangor, 47100 Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54508, 9/22/08. 76 FR 78146, 12/16/11. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
Pakistan	Abdul Qader Khan Research Laboratories (AQKRL), a.k.a., the following seven aliases: —Abdul Qadeer Khan Research Laboratories; —Dr. A.Q. Khan Research Laboratories; —Engineering Research Laboratories (ERL);—Institute of Industrial Control Systems (IICS); —Kahuta Nuclear Facility; —Kahuta Research Facility; *and* —Khan Research Laboratories (KRL). Dhoke Nusah, Dakhli Gangal, Near Chatri Chowk, P.O. Box 1398, Rawalpindi 46000, Pakistan; *and* P.O. Box 852, Rawalpindi, Pakistan; *and* P.O. Box 502, Kahuta, Pakistan; *and* 24 Mauve Area G 9/1, GPO Box 2891, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Al Technique Corporation of Pakistan, Ltd. (ATCOP), 4th Floor, Dodhy Plaza, 52 Jinnah Avenue, P.O. Box 1878, Islamabad, Pakistan.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
	Allied Trading Co., a.k.a., the following alias: —UCB Arcade. 2, Wazir Mansion, main Aiwan-e-tijarat Road, Boulton Market, Karachi–74000, Karachi, Pakistan (See alternate address under UCB Arcade in Uganda).	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090 10/01/01. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Defense Science and Technology Organization (DESTO), a.k.a., the following two aliases: —Defense Science and Technology Center; *and* —Chaklala Defense Science and Technology Organization. 182 Sir Syed Road, Chaklala Cantt, Rawalpindi 46200, Pakistan; *and* Headquarters, Chakklala Cantt, Rawalpindi, 46200, Pakistan.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	High Technologies, Ltd. (HTL), a.k.a., the following alias: —High Technology, Ltd. Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Machinery Master Enterprises Ltd. (MME), Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
	Maple Engineering Pvt. Ltd. Consultants, Importers and Exporters, Islamabad.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
	Pakistan Atomic Energy Commission (PAEC), a.k.a., the following alias: —Power Plant Workshops, P.O. Box 1114, Islamabad; and the following three subordinate entities: —National Development Complex (NDC), a.k.a., the following two aliases: —National Development Centre; *and* —National Defense Complex, Fateh Jang, Punjab, Rawalpindi, Pakistan; *and* P.O. Box 2216, Islamabad, Pakistan; —Pakistan Institute for Nuclear Science and Technology (PINSTECH), Nilore, Islamabad; —Nuclear reactors (including power plants), fuel reprocessing and enrichment facilities, all uranium processing, conversion and enrichment facilities, heavy water production facilities and any collocated ammonia plants.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
	People's Steel Mills, Javedan Nagar, Manghopir Road, Karachi 75890, Pakistan.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Space and Upper Atmosphere Research Commission (SUPARCO), a.k.a., the following alias: —Space and Upper Atmospheric Research Commission, Sector 28, Gulzar-e-Hijiri, Off University Road, P.O. Box 8402, Karachi 75270.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Wah Chemical Product Plant, a.k.a., the following alias: —Wah Nobel Chemicals Limited, Wah Cantonment, Rawalpindi, Pakistan.	For all items subject to the EAR	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
	Wah Munitions Plant, Wah Cantonment, Rawalpindi, Pakistan.	For all items subject to the EAR.	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items.	63 FR 64322, 11/19/98. 65 FR 14444, 03/17/00. 66 FR 50090, 10/01/01. 77 FR 58006, 9/19/12.
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Singapore				
*	* *	*	* *	*
	Cyberinn PTE LTD, a.k.a., the following alias: —Index Consultancy & Services PTE LTD., 1 Rochor Canal Road, #06–07 Sim Lim Square, 188504, Singapore.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54508, 9/22/08. 77 FR 58006, 9/19/12.

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

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
South Africa	Gunther Migeotte, 1 River Street, Rosebank, Cape Town, 7700, South Africa; *and* P.O. Box 36623, Menlo Park, 0102, South Africa; *and* 16 Manu Rua, 262 Sprite Avenue, Faerie Glen, 0081, South Africa; *and* Suite 17–106, The Waverley Business Park, Wyecroft Rd., Mowbray, Cape Town, 7925, South Africa (See alternate address under Norway).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
	Icarus Marine (Pty) Ltd., 1 River Street, Rosebank, Cape Town, South Africa; *and* Suite 17–106, The Waverley Business Park, Wyecroft Rd., Mowbray, Cape Town, 7925, South Africa.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
	Ralph Brucher, P.O. Box 9523, Centurion 0046, South Africa; *and* Unit 4, Techni Park East, Alwyn Street, Meyerspark Silverton, Pretoria, Gauteng, South Africa; *and* Batter St, Techniec Park East, Silverton, Pretoria, 0184, South Africa; *and* 26 Jakaranda St, Centurion, Gauteng 0157, South Africa; *and* Jacaranda St, Hennopspark Ext 7, Centurion, South Africa.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
	Scavenger Manufacturing (Pty) Ltd., P.O. Box 288, Silverton, Pretoria 0127, South Africa; *and* Unit 4, Techni Park East, Alwyn Street, Meyerspark Silverton, Pretoria, Gauteng, South Africa; *and* Batter St, Techniec Park East, Silverton, Pretoria, 0184, South Africa; *and* 26 Jakaranda St, Centurion, Gauteng 0157, South Africa; *and* Jacaranda St, Hennopspark Ext 7, Centurion, South Africa; *and* P.O. Box 9523, Centurion 0046, South Africa.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
	Shawn Hugo De Villiers, 1 River Street, Rosebank, Cape Town 7700, South Africa; *and* Myburgii Street, Somerset West, Cape Town, South Africa; *and* Suite 17–106, The Waverley Business Park, Wyecroft Rd., Mowbray, Cape Town, 7925, South Africa.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	75 FR 36516, 6/28/10. 77 FR 58006, 9/19/12.
*	* *	*	* *	*
Uganda	UCB Arcade, a.k.a., the following alias: —Allied Trading Co. P.O. Box 5999, Kampala, Uganda (See alternate address under Allied Trading Co. in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*
United Arab Emirates				

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

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	* *	*
	Alex Nouri Zadeh, a.k.a. the following three aliases: —Alex Banai; —Alex Norry; *and* —Nouri Zadeh, No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Fajr Almadeena Electronics, No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Jamal Hasan, a.k.a. the following alias: —Jamal Haji, No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Mohammad Nayeb, No. 102 and 106, 1st Floor, K5 Entrance, Alshami Rest. Bldg., Al Muraqqabat Rd., Deira, Dubai, 184609 U.A.E.; *and* P.O. Box 184607, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*
	Seyed Mahdi Mousavi, P.O. Box 49465, Dubai, UAE; *and* P.O. Box 7941, Dubai, U.A.E. (See alternate addresses under Iran).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
	Seyed Mousavi Trading, a.k.a., the following two aliases: —Hitech Computer Peripherals; *and* —Hitech Corporation. P.O. Box 49465, Dubai, UAE; *and* P.O. Box 7941, Dubai, U.A.E. (See alternate addresses under Iran).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR 58006, 9/19/12.
*	* *	*	* *	*

Dated: September 12, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–22952 Filed 9–18–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 12–14]

RIN 1515–AD91

Extension of Import Restrictions Imposed on Archaeological Material From Mali

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 material from Mali. The restrictions, which were previously imposed by Treasury Decision (T.D.) 97–80, extended by T.D. 02–55, and last extended and amended by CBP Dec. 07–77, are due to expire on September 19, 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 further extension. These restrictions are being extended pursuant to determinations of the United States Department of State under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 07–77 contains the Designated List of archaeological materials that describes the articles to which the restrictions apply.

DATES: *Effective Date:* September 19, 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, Virginia McPherson, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6563.

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 (hereafter, the ''Cultural Property Implementation Act'' or the ''Act'') (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), signatory nations (State Parties) may enter into bilateral or multilateral agreements to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements prescribed by the Act. Under the Act and applicable CBP regulations (19 CFR 12.104g), the restrictions 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 (19 U.S.C. 2602(b)). This period may be extended for additional periods, each such period not to exceed five years, where it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

In certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603(c)(1)). Under the Act and applicable CBP regulations (19 CFR 12.104g(b)), emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered materials (19 U.S.C. 2603(c)(3)).

On September 23, 1993, under the authority of the Cultural Property Implementation Act, the former U.S. Customs Service published Treasury Decision (T.D.) 93–74 in the **Federal Register** (58 FR 49428) imposing emergency import restrictions on archaeological objects from the region of the Niger River Valley of Mali and the Bandiagara Escarpment (Cliff), Mali and accordingly amending 19 CFR 12.104g(b).

On September 19, 1997, the United States entered into a bilateral agreement with Mali that continued without interruption the import restrictions previously placed on the same archaeological material. On September 23, 1997, the former United States Customs Service published T.D. 97–80 in the **Federal Register** (62 FR 49594), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating the types of archaeological material 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 September 20, 2002, the former United States Customs Service published T.D. 02–55 in the **Federal Register** (67 FR 59159), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until September 19, 2007.

On September 19, 2007, CBP published CBP Dec. 07–77 in the **Federal Register** (72 FR 53414), which amended 19 CFR 12.104g(a) to reflect the extension of the import restrictions on this cultural property and the addition of new subcategories of objects representing a broader time frame in the amended Designated List for an additional period of five years until September 19, 2012. Accordingly, the title of the bilateral agreement was amended at this time to read: ''Agreement between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century.''

On March 12, 2012, the Department of State proposed in the **Federal Register** (77 FR 14583) to extend the Agreement. Upon review of the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, Department of State, made the necessary determinations on July 20, 2012 for extending the Agreement with Mali to continue the imposition of import restrictions on the aforementioned categories of archaeological material for an additional five-year period. An exchange of diplomatic notes reflects the extension of those restrictions. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological Material from Mali covered by these import restrictions is set forth in CBP Dec. 07–77, see 72 FR 53414 dated September 19, 2007. More information on import restrictions can be obtained from the Mali country section of the International Cultural Property Protection Web site (*http://exchanges.state.gov/heritage/culprop/mlfact.html*).

The restrictions on the importation of these archaeological materials from Mali are to continue in effect through September 19, 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 Mali by removing the reference to ''CBP Dec. 07–77'' and adding in its place ''CBP Dec. 12–14'' in the column headed ''Decision No.''.

David V. Aguilar,

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

Approved: September 13, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–23057 Filed 9–18–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove a warning for growing cattle on pasture or in dry lot and to codify all monensin free-choice Type C medicated feeds in 21 CFR part 558. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Christina C. Edwards, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8228, Email: *christina.edwards@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA has noticed that the animal drug regulations for certain monensin free-choice Type C medicated feeds for growing cattle on pasture or in dry lot (slaughter, stocker, and feeder cattle; and dairy and beef replacement heifers) reflect a warning statement regarding the overdosing risk posed by uneaten free-choice feeds (refusals) that is unnecessary and not required on product labeling.

Refusals of free-choice cattle feeds, including compressed blocks, granules, and liquids, are unlikely in practice to be fed to another group of cattle. These products are used almost exclusively in pasture-based systems where the product is placed in the pasture with the animals and is left until consumed. In addition, it is extremely unlikely that these free-choice cattle feeds would be fed to another production class because these products generally are not appropriate for the nutritional needs of another production class.

For these reasons, FDA is revising the regulations to exclude monensin free-choice Type C medicated feeds for growing cattle on pasture or in dry lot from the requirement to include a warning statement. This action is being taken to improve the accuracy of the regulations.

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

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§§ 520.1448 and 520.1448a [Removed]

■ 2. Remove §§ 520.1448 and 520.1448a.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. In § 558.355, revise paragraphs (d)(7)(vii), (d)(10)(i), and (d)(10)(ii); remove and reserve paragraph (f)(3)(v); redesignate paragraph (f)(7) as paragraph (f)(8); and add new paragraph (f)(7) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(7) * * *

(vii) If feed refusals containing monensin are fed to other groups of cattle, the concentration of monensin in the refusals and amount of refusals fed should be taken into consideration to prevent monensin overdosing (see paragraphs (d)(10)(i) and (d)(10)(ii) of this section).

* * * * *

(10) * * *

(i) *Cattle (as described in paragraphs (f)(3)(i) through (f)(3)(xii) of this section):* See paragraphs (d)(6), (d)(7)(i), (d)(7)(v), (d)(7)(vii), and (d)(7)(viii) of this section. Paragraph (d)(7)(vii) of this section does not apply to free-choice Type C medicated feeds as defined in § 510.455 of this chapter.

(ii) *Dairy cows (as described in paragraphs (f)(3)(xiii) and (f)(3)(xiv) of this section):* See paragraphs (d)(6), (d)(7)(i), (d)(7)(vii), (d)(7)(viii), and (d)(7)(ix) of this section. Paragraph (d)(7)(vii) of this section does not apply to free-choice Type C medicated feeds as defined in § 510.455 of this chapter.

* * * * *

(f) * * *

(7) *Free-choice feeds*—(i) *Amount.* 150 milligrams per pound of protein-mineral block (0.033 percent).

(*a*) [Reserved]

(*b*) *Conditions of use*—(*1*) *Indications for use.* For increased rate of weight gain; and for prevention and control of coccidiosis caused by *Eimeria bovis* and *E. zuernii* in pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) which may require supplemental feed.

(*2*) *Limitations.* Provide 50 to 200 milligrams of monensin (0.34 to 1.33 pounds of block) per head per day, at least 1 block per 10 to 12 head of cattle. Roughage must be available at all times. Do not allow animals access to other protein blocks, salt or mineral, while being fed this product. The effectiveness of this block in cull cows and bulls has not been established. See paragraph (d)(10)(i) of this section.

(ii) *Amount.* 400 milligrams per pound of protein-mineral block (0.088 percent).

(*a*) *Sponsor.* See No. 067949 in § 510.600(c) of this chapter.

(*b*) *Conditions of use*—(*1*) *Indications for use.* For increased rate of weight gain in pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers).

(*2*) *Limitations.* Provide 80 to 200 milligrams of monensin (0.2 to 0.5 pounds of block) per head per day, at least 1 block per 5 head of cattle. Feed blocks continuously. Do not feed salt or minerals containing salt. The effectiveness of this block in cull cows and bulls has not been established. See paragraph (d)(10)(i) of this section.

(iii) *Amount.* 175 milligrams per pound of protein-mineral block (0.038 percent).

(*a*) *Sponsor.* See No. 066071 in § 510.600(c) of this chapter.

(*b*) *Conditions of use*—(*1*) *Indications for use.* For increased rate of weight gain in pasture cattle (slaughter, stocker, and feeder).

(*2*) *Limitations.* Provide 40 to 200 milligrams of monensin (0.25 to 1.13 pounds or 4 to 18 ounces of block) per head per day, at least 1 block per 4 head of cattle. Do not allow cattle access to salt or mineral while being fed this product. Ingestion by cattle of monensin at levels of 600 milligrams per head per day and higher has been fatal. The effectiveness of this block in cull cows and bulls has not been established. See paragraph (d)(10)(i) of this section.

(iv) *Amount.* 400 milligrams per pound of block (0.088 percent).

(*a*) *Sponsor.* See No. 051267 in § 510.600(c) of this chapter.

(*b*) *Conditions of use*—(*1*) *Indications for use.* For increased rate of weight gain in pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers).

(*2*) *Limitations.* Provide 50 to 200 milligrams of monensin (2 to 8 ounces of block) per head per day, at least 1 block per 5 head of cattle. Feed blocks continuously. Do not feed salt or mineral supplements in addition to the blocks. Ingestion by cattle of monensin at levels of 600 milligrams per head per day and higher has been fatal. The effectiveness of this block in cull cows and bulls has not been established. See paragraph (d)(10)(i) of this section.

* * * * *

Dated: September 13, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–23065 Filed 9–18–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–034–FOR; Docket ID No. OSM–2011–0018]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Montana regulatory program (the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposed revisions to and additions of statutory definitions of approximate original contour, in situ coal gasification, and recovery fluid. Montana revised its program to clarify ambiguities and improve operational efficiency. Montana intends to promulgate regulations pertaining to in situ coal gasification within one year. The statutory revisions discussed here will support that future rulemaking effort.

DATES: *Effective Date:* September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Chief, Casper Field Office, Telephone: (307) 261–6550, email address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15 and 926.30.

II. Submission of the Proposed Amendment

By letter dated August 19, 2011, Montana sent us an amendment to its

program (Administrative Record No. MT–31–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the amendment at its own initiative.

We announced receipt of the proposed amendment in the December 6, 2011, **Federal Register** (76 FR 76111; Administrative Record No. MT–31–10). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on January 5, 2012. We received comments from two Federal agencies, one State agency, and one industry group.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to Montana's Statute

Montana proposed recodification changes to its statutory definitions. MCA § 82–4–203(27) through (56) have been recodified as MCA § 82–4–203(28) through (58). The addition of two new definitions (discussed below) necessitated these changes. These non-substantive changes do not alter the definitions' meaning or effectiveness.

Because these changes are minor, we find the provisions remain no less stringent than SMCRA.

B. Revisions to Montana's Statute That Are Not the Same as the Corresponding Provisions of the Federal Statute

Montana proposed revisions to its statutory definition of Approximate Original Contour (AOC). The existing definition contained language similar to the Federal definition of AOC as well as additional stipulations. Montana proposed to reference its definition of ''hydrologic balance'' within its existing AOC definition. The Federal counterpart definition does not employ the term hydrologic balance.

The proposed addition has no effect beyond referring the reader to the definition of an existing term. This addition does not alter the definition's meaning or effectiveness. This definition remains no less stringent than SMCRA.

C. Revisions to Montana's Statutes With No Corresponding Federal Statutes

Montana proposed two new definitions which do not have Federal counterparts under SMCRA: ''in situ coal gasification'' and ''recovery fluid.''

Montana proposed to define ''in situ coal gasification'' whereas SMCRA defines ''in situ processing.'' The Federal definition lists in situ gasification as one type of in situ processing. Montana is proposing to define a subset of what the Federal Program defines. Montana's proposed language directly mirrors Wyoming's existing definition of ''in situ mining.'' Wyoming's definition was approved on March 31, 1980 (45 FR 20930), under the partial approval of its original program. That approval set precedent for the definition Montana recently proposed.

Montana's proposed definition excludes ''the storage of carbon dioxide in a geologic storage reservoir'' from inclusion under in situ coal gasification. This phrase precludes in situ gasification projects from including carbon capture and sequestration (CCS) under the Montana coal regulatory program.

Montana Senate Bill 498 (SB498) designated the Board of Oil and Gas Conservation as the regulatory authority for CCS activities within the State. SB498 generally established that land surface owners own the pore space below the surface unless it is otherwise documented. As such, the Board would regulate any proposed CCS activities appropriately. CCS operations have potential environmental impacts such as groundwater contamination which, by exclusion from regulation under in situ coal gasification, would be avoided under Montana's coal regulatory program (CCS would invoke a separate regulatory scheme). For this reason, excluding CCS from in situ coal gasification is more stringent than the Federal Program because the Federal Program does not address this issue at all.

Montana's new definition provides a technically accurate description of in situ coal gasification. Because there is precedent for Montana's proposed definition, the proposed language exceeds what is defined or restricted under the Federal program, and the definition is technically accurate, this addition is no less stringent than SMCRA.

Montana proposed to define ''recovery fluid.'' The Federal Program does not define this term; however, the Wyoming program approved by OSM on March 31, 1980 (45 FR 20930) defines this term. That approval set precedent for the definition Montana recently proposed. Montana's new definition provides a technically accurate description of recovery fluid. Because there is precedent for Montana's proposed definition, the proposed language is technically accurate, and Montana exceeds what is defined under the Federal program, this addition is no less stringent than SMCRA.

We are approving all of Montana's August 19, 2011 proposed amendments.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record ID No. MT–31–10), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record ID No. MT–31–3).

By letter dated November 1, 2011, the Mine Safety and Health Administration (MSHA) responded to our request (Administrative Record ID No. MT–31–08). MSHA concurs with the proposed revisions. We agree with MSHA that the proposed revisions are acceptable.

By letter dated November 1, 2011, the Bureau of Land Management (BLM) Montana State Office responded to our request (Administrative Record ID No. MT–31–09). The BLM stated that the proposed changes appear to be substantially in agreement with the corresponding Federal regulations and are therefore no less stringent than SMCRA. The BLM has no objection to the proposed amendments. We agree with BLM's assessment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record Document ID No. MT–31–3) by letter dated September 28, 2011. EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the

SHPO and ACHP on amendments that may have an effect on historic properties. On September 28, 2011, we requested comments on Montana's amendment (Administrative Record ID Nos. MT–31–4 and MT–31–5). By letter dated September 26, 2011, the SHPO responded to our request (Administrative Record ID No. MT–31–07). The SHPO believes the proposed changes do not appear to degrade consideration of cultural resources in any less effective fashion than required in Federal regulations. We agree with the SHPO's assessment.

V. OSM's Decision

Based on the above findings, we approve Montana's August 19, 2011 amendment. To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which

is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 27, 2012.

Allen D. Klein

Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 19, 2011	September 19, 2012	MCA 82–4–203(4)(c) (definition of AOC); addition of –203(27) ''in situ coal gasification;'' –203(44) ''recovery fluid;'' recodification of former –203(27) through (56).

[FR Doc. 2012–23087 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–064–FOR; Docket ID: OSM–2012–0005]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas revised its program at its own initiative to raise revenues sufficient to cover its anticipated share of costs to administer the coal regulatory program and to encourage mining companies to more quickly reclaim lands and request bond release, thereby fulfilling SMCRA's purpose of assuring the reclamation of mined land as quickly as possible.

DATES: *Effective Date:* September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. Email: *aclayborne@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated February 9, 2012 (Administrative Record No. TX–700), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Texas sent the amendment on its own initiative.

We announced receipt of the proposed amendment in the March 28, 2012, **Federal Register** (77 FR 18738). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on April 27, 2012. We did not receive any public comments.

III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

16 Texas Administrative Code (TAC) Section 12.108 Permit Fees

Texas proposed to revise its regulations at 16 TAC sections 12.108(b)(1)–(3), adjusting the annual coal mining permit fees for calendar year 2011 and 2012. Fees for mining activity during calendar year 2011 must be paid by coal mine operations by March 15, 2012, which is in Texas' 2012 fiscal year. Similarly, fees for mining activity during calendar year 2012 are due by March 15, 2013, which is in Texas' 2013 fiscal year.

By this amendment, Texas is:

(1) Increasing the current $130.00 per acre fee to $154.00 per acre, the amount in paragraph (b)(1) for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year;

(2) Increasing the current $5.50 per acre fee to $10.40 per acre, the amount in paragraph (b)(2) for each acre of land within a permit area covered by a reclamation bond on December 31st of the year; and

(3) Increasing the current $4,250.00 fee to $6,900.00, the amount in paragraph (b)(3) for each permit in effect on December 31st of the year.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority.

The Federal regulations also provide that the fees may be less than, but not more than, the actual or anticipated cost of reviewing, administering, and enforcing the permit.

Texas' amendment describes how Texas funds its coal mining regulatory program. Texas operates on a biennial budget which appropriates general revenue funds for permitting and inspecting coal mining facilities within the state. This appropriation is contingent on the Railroad Commission of Texas (Commission) assessing fees sufficient to generate revenue to recover the general revenue appropriation. When calculating anticipated costs to the Commission for regulating coal mining activity, Texas anticipates OSM providing grant funding for regulatory program costs based on section 705(a) of SMCRA. Historically, Texas has estimated that OSM would fund 50% of the regulatory program costs. However, OSM does not agree that this is a reasonable expectation in light of the Administration's proposed fiscal year 2013 budget which reduces overall funding to states, and may result in them receiving less than fifty percent of their anticipated regulatory program costs, consistent with Section 705 of SMCRA.

Texas adjusts its fees biennially to recover the amounts expended from state appropriations in accordance with a formula and schedule agreed to in 2005 by the coal mining industry and the Commission. This amendment represents the fourth adjustment to surface mining fees based upon that agreement. Adjustments are expected to continue for a ten year period that began in 2005.

We find that Texas' fee changes are consistent with the discretionary authority provided by the Federal regulation at 30 CFR 777.17. Therefore, OSM approves Texas' proposed permit fees, recognizing that Texas has a process to adjust its fees to cover the cost of its regulatory program not covered by the Federal grant.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On February 28, 2012, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–700.1). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comment

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on February 28, 2012, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. TX–700.1). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 28, 2012, we requested comments on Texas' amendment (Administrative Record No. TX–700.1), but neither the SHPO nor ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on February 9, 2012 (Administrative Record No. TX–700).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943 that codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Taking

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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.

The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 17, 2012.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* *	* *
February 9, 2012	September 19, 2012	16 TAC 12.108(b)(1)–(3)

[FR Doc. 2012–23075 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0555; FRL–9728–1]

Approval and Promulgation of Implementation Plans; Florida: New Source Review—Prevention of Significant Deterioration; Fine Particulate Matter ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP) to EPA on March 15, 2012. The March 15, 2012, SIP revision modifies Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) permitting regulations to adopt, into the Florida SIP, federal NSR PSD requirements for the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) as promulgated in EPA's 2008 NSR $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ PSD Increment, Significant Impact

Levels (SILs) and Significant Monitoring Concentration (SMC) Rule. EPA is approving portions of Florida's March 15, 2012, SIP revision because they are consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: *Effective Date:* This rule will be effective October 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0555. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone number is (404) 562–9214; email address: *adams.yolanda@epa.gov.* For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; email address: *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

EPA is taking final action to approve portions of Florida's March 15, 2012, SIP revision to adopt federal NSR permitting requirements. Florida's March 15, 2012, SIP revision includes changes to the Florida Administrative Code (F.A.C.) Chapter 62–210, *Stationary Sources—General Requirements, Section 200—Definitions (rule 62–210.200),* and Chapter 62–212, F.A.C., *Stationary Sources—Preconstruction Review, Section 300—General Preconstruction Review Requirements (rule 62–212.300)* and *Section 400—Prevention of Significant Deterioration (rule 62–212.400).* These changes adopt federal PSD permitting regulations promulgated in the final rulemakings entitled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),'' 73 FR 28321 (May 16, 2008), hereafter referred to as the ''NSR $PM_{2.5}$ Rule'' and ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),'' 75 FR 64864 (October 20, 2010), hereafter referred to as the ''$PM_{2.5}$ PSD Increment-SILs-SMC Rule.'' EPA is not approving in this action Florida's incorporation into its SIP of the SIL thresholds and provisions promulgated in EPA's $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

On July 27, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Florida's NSR PSD program. *See* 77 FR 44198. Comments on the proposed rulemaking were due on or before August 27, 2012. No comments, adverse or otherwise, were received on EPA's July 27, 2012 proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Florida's NSR PSD program as provided in EPA's July 27, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. EPA's July 27, 2012, proposed rulemaking contains more detailed information regarding the Florida SIP revision being approved today and the rationale for today's final action. Detailed information regarding the $PM_{2.5}$ NAAQS and NSR Program can also be found in EPA's July 27, 2012, proposed rulemaking as well as the abovementioned final rulemakings.

A. NSR $PM_{2.5}$ Rule

EPA finalized the NSR $PM_{2.5}$ Rule on May 16, 2008, which revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment areas and nonattainment areas (NAA) that: (1) Require NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) establish significant emission rates for direct $PM_{2.5}$ and precursor pollutants (including sulfur dioxide (SO_2) and nitrogen oxides (NO_X)); (3) establish $PM_{2.5}$ emission offsets; (4) provide exceptions to the grandfathering policy for permits being reviewed under the PM_{10} surrogate program; and (5) require states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ and PM_{10} emission limits in PSD or nonattainment NSR (NNSR) permits. Additionally, the NSR $PM_{2.5}$ Rule authorized states to adopt provisions in their NNSR rules that would allow interpollutant offset trading. *See* 73 FR 28321. States were required to provide SIP submissions to address the requirements for the NSR $PM_{2.5}$ Rule by May 16, 2011. Florida's March 15, 2012, SIP revision addresses only the PSD requirements related to EPA's May 16, 2008, NSR $PM_{2.5}$ Rule.[1]

1. PM_{10} Surrogate and Grandfathering Policy

In the NSR $PM_{2.5}$ Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, as of the effective date of the rule, rather than relying on PM_{10} as a surrogate, with two exceptions.[2] The first exception is a ''grandfathering'' provision in the federal PSD program at 40 CFR

[1] Florida's March 15, 2012, SIP revision only addresses the State's PSD permitting program and does not adopt the NNSR permitting requirements for $PM_{2.5}$ emission offsets, condensable provision or the discretionary interpollutant trading policy and ratios promulgated in the 2008 NSR $PM_{2.5}$ Rule. Moreover Florida is in attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

[2] After EPA promulgated the NAAQS for $PM_{2.5}$ in 1997, the Agency issued guidance documents related to using PM_{10} as a surrogate for $PM_{2.5}$ entitled: ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$.'' John S. Seitz, EPA, October 23, 1997 (the ''Seitz Memo'') and ''Implementation of New Source Review Requirements in PM–2.5 Nonattainment Areas'' (the ''2005 $PM_{2.5}$ NNSR Guidance''). The Seitz Memo was designed to help states implement NSR requirements pertaining to the new $PM_{2.5}$ NAAQS in light of technical difficulties posed by $PM_{2.5}$ at that time. The 2005 $PM_{2.5}$ NNSR Guidance provided direction regarding implementation of the NNSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ nonattainment designations (April 5, 2005) and EPA's promulgation of final $PM_{2.5}$ NNSR regulations (this included recommending that until EPA promulgated the $PM_{2.5}$ major NSR regulations, ''States should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the $PM_{2.5}$ NAAQS.'').

52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM_{10} Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for $PM_{2.5}$ are approved by EPA, whichever comes first. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008) [3] that did not have a final and effective PSD permit before the effective date of the repeal will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ unless the application includes a valid surrogacy demonstration.[4] *See* 76 FR 28646. In its March 15, 2012, SIP revision, Florida did not adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi) into its PSD regulations. Therefore, Florida's SIP is consistent with current federal regulations regarding the repeal of the grandfathering provision.

2. ''Condensable'' Provision

In the NSR $PM_{2.5}$ Rule, EPA revised the definition of ''*regulated NSR pollutant*'' for PSD to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions'' shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits issued. *See* 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and ''Emissions Offset Interpretative Ruling'' (40 CFR part 51, appendix S). On March 16, 2012, EPA proposed a rulemaking to amend the definition of ''*regulated NSR pollutant''* promulgated in the NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. *See* 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter emissions'' be included as part of the measurement and regulation of ''particulate matter emissions.'' [5]

B. $PM_{2.5}$ PSD IncrementSILs-SMC Rule

The $PM_{2.5}$ PSD Increment-SILs-SMC Rule provided additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR including: (1) $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS; (2) SILs used as a screening tool (by a major source subject to PSD) to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and (3) a SMC, (also a screening tool) used by a major source subject to PSD to determine the subsequent level of $PM_{2.5}$ data gathering required for a PSD permit application. The SILs and SMC are numerical values that represent thresholds of insignificant, i.e., *de minimis,*[6] modeled source impacts or monitored (ambient) concentrations, respectively. EPA established such values to be used as screening tools by a major source subject to PSD to determine the subsequent level of analysis and data gathering required for a PSD permit application for emissions of $PM_{2.5}$. EPA's authority to implement the SILs and SMC for PSD purposes has been challenged by the Sierra Club. *Sierra Club* v. *EPA,* Case No. 10–1413 (DC Circuit Court).[7]

1. PSD Increments

PSD increments prevent air quality in clean areas from deteriorating to the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate ''significant deterioration'' [8] of air quality for a pollutant in an area. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant.'' When a source applies for a permit to emit a regulated pollutant in an area that meets the NAAQS, the state and EPA must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. As described in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical PSD increments for $PM_{2.5}$ as a new pollutant [9] for which NAAQS were established after August 7, 1977,[10] and derived 24-hour and annual $PM_{2.5}$ increments for the three area classifications (Class I, II and III) using the ''contingent safe harbor'' approach. *See* 75 FR 64869 and the ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c). In addition to PSD increments for the $PM_{2.5}$ NAAQS, the $PM_{2.5}$ PSD Increment-SILs-SMC Rule amended the definition at 40 CFR 51.166 and 52.21 for ''*major source baseline date*'' and ''*minor source baseline date*'' (including trigger date) to establish the $PM_{2.5}$ NAAQS specific dates associated with the

[3] Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 76 FR 28321.

[4] Additional information on this issue can also be found in an August 12, 2009, final order on a title V petition describing the use of PM_{10} as a surrogate for $PM_{2.5}$. In the Matter of *Louisville Gas & Electric Company,* Petition No. IV–2008–3, Order on Petition (August 12, 2009).

[5] The term ''particulate matter emissions'' includes particles that are larger than $PM_{2.5}$ and PM_{10} and is an indicator measured under various New Source Performance Standards (NSPS) at 40 CFR part 60. In addition to the NSPS for PM, it is noted that states have regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

[6] The *de minimis* principle is grounded in a decision described by the court case *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir. 1980). In this case, reviewing EPA's 1978 PSD regulations, the court recognized that ''there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' 636 F.2d at 360. *See* 75 FR 64864.

[7] On April 6, 2012, EPA filed a brief with the D.C. Circuit court defending the Agency's authority to implement SILs and SMC for PSD purposes.

[8] Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the ''maximum allowable increase'' of an air pollutant allowed to occur above the applicable baseline concentration1 for that pollutant. Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area.

[9] EPA generally characterized the $PM_{2.5}$ NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM_{10} NAAQS with the NAAQS for $PM_{2.5}$ when the $PM_{2.5}$ NAAQS were promulgated in 1997. EPA rather retained the annual and 24-hour NAAQS for $PM_{2.5}$ as if $PM_{2.5}$ was a new pollutant even though EPA had already developed air quality criteria for PM generally. *See* 75 FR 64864 (October 20, 2012).

[10] EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

implementation of $PM_{2.5}$ PSD increments. *See* 75 FR 64864.

2. Significant Monitoring Concentrations

As mentioned above, the SMC numerical value represents a threshold of insignificant (i.e., *de minimis*) monitored ambient impacts on pollutant concentrations. In the $PM_{2.5}$ PSD Increment-SILs-SMC Rule, EPA established a $PM_{2.5}$ SMC of 4 μg/m³ to be used as a screening tool by a major source subject to PSD to determine the subsequent level of $PM_{2.5}$ data gathering required for a PSD permit application. Using the SMC as a screening tool, sources may be able to demonstrate that the modeled air quality impact of emissions from the new source or modification, or the existing air quality level in the area where the source would construct, is less than the SMC (i.e., *de minimis*), and as such, may be allowed to forego the preconstruction monitoring requirement for a particular pollutant at the discretion of the reviewing authority.

Recently, the Sierra Club filed suit challenging EPA's authority to implement the $PM_{2.5}$ SILs [11] as well as the SMC for PSD purposes as promulgated in the October 20, 2012, rule. *Sierra Club* v. *EPA,* Case No 10–1413, DC Circuit Court. Specifically, regarding the SMC, Sierra Club claims that the use of SMCs to exempt a source from submitting a year's worth of monitoring data is inconsistent with the CAA. EPA responded to Sierra Club's claims in a Brief dated April 6, 2012, which describes the Agency's authority to develop and promulgate SMC.[12] A copy of EPA's April 6, 2010, Brief can be found in the docket for today's final rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0555.

II. This Action

EPA is taking final action to approve into the Florida SIP portions of the State's March 15, 2012, SIP revision to adopt the PSD permitting regulations to implement the $PM_{2.5}$ NAAQS including the NSR $PM_{2.5}$ and $PM_{2.5}$ Increment-SILs-SMC Rules. FDEP's PSD program definitions and preconstruction permitting rules are found at rule 62–210.200, F.A.C., and rules 62–212.300 through 62–212.400, F.A.C., respectively and apply to major stationary sources or modifications constructed in areas designated attainment or unclassifiable/attainment as required under part C of title I of the CAA with respect to the NAAQS. These changes to Florida's rules became state effective on March 28, 2012. FDEP's SIP revision adopts the NSR $PM_{2.5}$ Rule PSD provisions including: (1) The requirement for NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) the amendment establishing significant emission rates for direct $PM_{2.5}$ and precursor pollutants (SO_2 and NO_X) and recognizing $PM_{2.5}$ precursors for the definition of ''*significant emission rates*'' (at rule 62–21.200(282)) (as amended at 40 CFR 51.166(b)(23)(i)); and (3) the PSD requirement for states to address condensable PM in establishing enforceable emission limits for PM_{10} and $PM_{2.5}$ (at 62–212.300(1)(f)) as promulgated at 40 CFR 51.166(b)(49). Additionally, Florida's March 15, 2012, SIP revision did not adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi) in accordance with the repeal of the $PM_{2.5}$ grandfathering provision.

Regarding the condensable provision and EPA's intent to amend the definition of ''regulated NSR pollutant'' as discussed in the March 16, 2012, correction rulemaking, Florida's March 15, 2012, SIP revision did not adopt the term ''particulate matter emissions'' regarding the requirement to consider condensables as promulgated in the NSR $PM_{2.5}$ Rule. *See* 77 FR 15656. As mentioned above, EPA is taking final action to approve into the Florida SIP the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10}. Florida's March 15, 2012, SIP revision added definitions for ''*condensable* PM_{10}'' at 62–210.200(94), ''*condensable* $PM_{2.5}$'' at 62–210–200(95) and ''*condensable PM''* at 62–210.200(93), for clarification purposes. EPA is taking final action to approve the aforementioned changes into the Florida SIP.

With respect to the $PM_{2.5}$ PSD Increment-SILs SMC Rule, EPA is taking final action to also approve into the Florida SIP the PSD increments for $PM_{2.5}$ annual and 24-hour NAAQS pursuant to section 166(a) of the CAA and SMC of 4 μg/m³ for $PM_{2.5}$ NAAQS. The March 15, 2012, SIP revision: (1) Revises the definition for ''*maximum allowable increase''* to incorporate by reference (IBR) the $PM_{2.5}$ PSD increments numerical values (established in the ambient air increment tables at 40 CFR 51.166(c)(1) and 52.21(c) at 62–204.800, F.A.C.[13]); (2) amends the definitions for ''*major source baseline date''* and ''*minor source baseline date''* to establish relevant dates for $PM_{2.5}$ increment consumption and establish trigger dates (as established at 40 CFR 51.166(b)(14)(i)(c) and 51.166(b)(14)(ii)(c) respectively) and; (3) revises the definition for ''*baseline area''* as promulgated at 40 CFR 51.166(b)(15)(i) and (ii) and adds definitions for *''baseline concentration.''* The March 15, 2012, SIP submission also adds definitions for ''*Class I Area''* and ''*Class II Area''* at Chapter 62–210.200(77) and (78), F.A.C., respectively. The definition for Class I Area IBR 40 CFR part 81, Subpart D (the federal Class I Area list) at rule 62–204.800, F.A.C.

Regarding the SILs and SMC, EPA's authority to implement the $PM_{2.5}$ SILs and SMC is currently the subject of litigation by the Sierra Club. In a brief filed in the DC Circuit on April 6, 2012, EPA described the Agency's authority under the CAA to promulgate and implement the SMCs and SILs *de minimis* thresholds. *Sierra Club* v. *EPA,* Case No 10–1413 DC Circuit. However, EPA is finalizing approval of the promulgated SMC thresholds into the Florida SIP (at rule 62–212.400(3)(e)1, F.A.C.) because the Agency believes the SMC is a valid exercise of the Agency's *de minimis* authority as well as the fact they are consistent with EPA's promulgated levels in the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. The ongoing litigation may result in the court decision that may require subsequent rule revisions and SIP revisions from Florida.

In response to the litigation, EPA requested that the court remand and vacate the new regulatory text at 40 CFR 51.166(k)(2) and 52.21(k)(2) concerning the implementation of SILs for $PM_{2.5}$ so that EPA can make necessary rulemaking revisions to that text.[14] In light of EPA's request for remand and vacatur and our acknowledgement of

[11] As mentioned earlier, due to litigation by the Sierra Club, EPA is not taking final action on the SILs portion of the Florida March 15, 2012, SIP revision at this time but will take action once the court case regarding SILs implementation is resolved.

[12] Additional information on this issue can also be found in an April 25, 2010, comment letter from EPA Region 6 to the Louisiana Department of Environmental Quality regarding the SILs-SMC litigation. A copy of this letter can be found in the docket for today's rulemaking at *www.regulations.gov* using docket ID: EPA–R04–OAR–2012–0555.

[13] Florida IBR federal rules at rule 62–204.800 F.A.C.

[14] In the preamble to the October 20, 2010, final rule EPA indicates that the Agency does not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of regulating authority for use in the PSD permitting process. *See* 75 FR 64864 at 64899.

the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, the Agency has determined at this time not to approve the SILs portion of FDEP's March 15, 2012, SIP revision that contains the affected regulatory text in Florida's PSD regulations at rule, 62–212.400(5), F.A.C., and 62–210.200(283)(c), F.A.C. EPA will take action on the SILs portion of Florida's March 15, 2012, SIP revision in a separate rulemaking once the issue regarding the court case has been resolved.[15]

III. Final Action

EPA is taking final action to approve portions of Florida's March 15, 2012, SIP revision (with the exception of the SILs threshold and provisions), that adopt federal permitting regulations amended in the NSR $PM_{2.5}$ and the $PM_{2.5}$ PSD Increment-SILs-SMC Rules to implement the $PM_{2.5}$ NAAQS for the NSR program because they are consistent with section 110 of the CAA and its regulations regarding NSR permitting.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 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, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: September 6, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

■ 2. Section 52.520(c) is amended under Chapters 62–210 and 62–212 by revising the entries for ''Section 62–210.200'' and ''Section 62–212.400'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation

[15] EPA is currently developing guidance to provide a provisional course of action to implement the $PM_{2.5}$ SILs pending revision to implementing (k)(2) provisions and the litigation. The guidance will ensure that the $PM_{2.5}$ SILs are properly applied as part of a PSD compliance demonstration to show that a source's impact will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS or increment.

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
62–210.200 ...	Definitions	March 28, 2012	September 19, 2012 [Insert citation of publication].	As of September 19, 2012, 61–210.200 does not include Florida's revision to adopt the $PM_{2.5}$ SILs threshold and provisions (as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)).
*	*	*	*	*
Chapter 62–212 Stationary Sources—Preconstruction Review				
62–212.400 ...	Prevention of Significant Deterioration.	March 28, 2012	September 19, 2012 [Insert citation of publication].	As of September 19, 2012, 61–212.400 does not include Florida's revision to adopt the $PM_{2.5}$ SILs threshold and provisions (as promulgated in the October 20, 2010, $PM_{2.5}$ PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)).
*	*	*	*	*

* * * * *

[FR Doc. 2012–22976 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0648; FRL–9728–7]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County: Infrastructure and Interstate Transport Requirements for the 1997 and 2008 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the Governor of New Mexico for the City of Albuquerque/Bernalillo County area, pursuant to the Clean Air Act (CAA or the Act). These submittals address the infrastructure elements specified in the CAA necessary to implement, maintain, and enforce the 1997 and 2008 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). We find that the current Albuquerque/Bernalillo County State Implementation Plan (SIP) meets the infrastructure elements for the 1997 and 2008 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. We also find that the current Albuquerque/Bernalillo County SIP meets the CAA requirement that emissions from sources in the area do not interfere with prevention of significant deterioration (PSD) measures required in the SIP of any other state, with regard to the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is also approving SIP revisions that modify the PSD SIP to include nitrogen oxides (NO_X) as an ozone precursor. EPA is approving revisions to the Albuquerque/Bernalillo County PSD SIP that identify the $PM_{2.5}$ precursors and establish significant emission rates for said precursors, consistent with the federal requirements. We are also approving other revisions to the Albuquerque/Bernalillo County PSD SIP to maintain consistency with the federal PSD permitting requirements. In addition to these revisions, EPA is approving other revisions to the Albuquerque/Bernalillo County SIP necessary to implement the NAAQS.

DATES: This final rule is effective on October 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2009–0648. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the City of Albuquerque, Environmental Health Department—Air Quality Division, One Civic Plaza, Room 3047, Albuquerque, New Mexico 87103, telephone 505–768–1972, email address *aqd@cabq.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7128; fax number 214–665–6762; email address *walser.john@epa.gov*.

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

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I. Background

a. Section 110(a)(1) and (2)

The background for today's action is discussed in detail in our April 13, 2012 proposal (76 FR 22249). In that notice we proposed to approve submittals from Albuquerque/Bernalillo County that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 and 2008 ozone and the 1997 and 2006 $PM_{2.5}$ standards. Those submittals are dated May 24, 2006 and August 16, 2010. We proposed to find that the following section 110(a)(2) elements are contained in the current Albuquerque/Bernalillo County SIP and provide the infrastructure for implementing the 1997 and 2008 ozone and the 1997 and 2006 $PM_{2.5}$ standards: emission limits and other control measures (section 110(a)(2)(A)); ambient air quality monitoring/data system (section 110(a)(2)(B)); the program for enforcement of control measures (section 110(a)(2)(C)); international and interstate pollution abatement (section 110(a)(2)(D)(ii)); adequate resources (section 110(a)(2)(E)); stationary source monitoring system (section 110(a)(2)(F)); emergency power (section 110(a)(2)(G)); future SIP revisions (section 110(a)(2)(H)); consultation with government officials (section 110(a)(2)(J)); public notification (section 110(a)(2)(J)); PSD and visibility protection (section 110(a)(2)(J)); air quality modeling/data (section 110(a)(2)(K)); permitting fees (section 110(a)(2)(L)); and consultation/participation by affected local entities (section 110(a)(2)(M)).

In addition, we proposed to find that Albuquerque/Bernalillo County has adequately addressed one of the four required elements (or prongs) of CAA section 110(a)(2)(D)(i), the element which requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state. We are determining that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures to prevent significant deterioration of air quality in any other state for the 1997 and 2008 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS (CAA section 110(a)(2)(D)(i)(II)).

b. PSD Requirements

In conjunction with our proposed finding that the Albuquerque/Bernalillo County SIP meets the section 110(a)(1) and (2) infrastructure and interstate transport SIP elements previously listed for the four NAAQS, we proposed to approve portions of two SIP revisions submitted by the Governor of New Mexico to EPA on May 24, 2006 and August 16, 2010 to the Albuquerque PSD Permitting Program at 20.11.61 NMAC. These revisions identify NO_X as a precursor to ozone, identify the precursors for $PM_{2.5}$ and the applicable significant emission rates for $PM_{2.5}$ PSD permitting, and make other necessary updates to maintain consistency with the federal PSD permitting requirements at 40 CFR 51.166 and 40 CFR Part 51, Appendix W. EPA believes that these PSD revisions, taken together with the PSD SIP and the interstate transport SIP, satisfies the PSD-related requirements of 110(a)(2)(C), 110(a)(2)(J), and the element of section 110(a)(2)(D)(i) which requires that the SIP prohibit air emissions from sources within a state from interfering with measures required to prevent significant deterioration of air quality in any other state.

c. Additional SIP Revisions

EPA also proposed to approve a portion of a SIP revision submitted on November 6, 2009 revising the Albuquerque/Bernalillo County SIP for Ambient Air Quality Standards, codified at 20.11.8 NMAC (Part 8). The substantive revisions submitted to Part 8 revise the local ambient air quality standards to make them consistent with the current NAAQS.

Our April 13, 2012 proposal provides a detailed description of all relevant submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on May 14, 2012, and we did not receive any adverse comments.

II. Final Action

We are approving the submittals provided to demonstrate that the Albuquerque/Bernalillo County SIP meets the infrastructure elements for the 1997 and 2008 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);
Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);
Program for enforcement of control measures (110(a)(2)(C) of the Act);
Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act;
Adequate resources (110(a)(2)(E) of the Act);
Stationary source monitoring system (110(a)(2)(F) of the Act);
Emergency power (110(a)(2)(G) of the Act);
Future SIP revisions (110(a)(2)(H) of the Act);
Consultation with government officials (110(a)(2)(J) of the Act);
Public notification (110(a)(2)(J) of the Act);
Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act);
Air quality modeling data (110(a)(2)(K) of the Act);
Permitting fees (110(a)(2)(L) of the Act); and
Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

We are approving the portion of the Albuquerque/Bernalillo County SIP revision submittal that addresses the requirement of section 110(a)(2)(D)(i)(II) of the Act that emissions from sources in Albuquerque/Bernalillo County do not interfere with measures required in the SIP of any other state under part C of the Act regarding PSD for the 1997 and 2008 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.

We are approving Albuquerque/Bernalillo County PSD SIP provisions to 20.11.61 NMAC submitted May 24, 2006 and August 16, 2010. These SIP revisions address NO_X as a precursor for ozone, consistent with EPA's November 29, 2005 Phase 2 rule for the 1997 ozone NAAQS (70 FR 71612). These revisions also identify the precursors for $PM_{2.5}$ and significant emission rates necessary for $PM_{2.5}$ PSD permitting, consistent with EPA's 2008 $PM_{2.5}$ NSR rule for the 1997 and 2006 $PM_{2.5}$ NAAQS (73 FR 28321, May 16, 2008). Additionally, the May 24, 2006 and August 16, 2010 submittals make numerous other changes necessary to maintain consistency with the federal PSD permitting requirements. Specifically, we are approving revisions to 20.11.61.7, 20.11.61.28, and 20.11.61.29 NMAC submitted on May 24, 2006. We are also approving revisions to 20.11.61.1, 20.11.61.2, 20.11.61.7, 20.11.61.11, 20.11.61.12, 20.11.61.14, 20.11.61.15, 20.11.61.16, 20.11.61.17, 20.11.61.18, 20.11.61.19, 20.11.61.20, 20.11.61.21, 20.11.61.23, 20.11.61.24, 20.11.61.25, 20.11.61.26, 20.11.61.27, 20.11.61.28, 20.11.61.29, 20.11.61.30, and 20.11.61.31 NMAC submitted on August 16, 2010.

We are also approving SIP revisions from November 6, 2009 pertaining to updating Part 8 Ambient Air Quality Standards (20.11.8 NMAC). EPA is approving these revisions pursuant to section 110 of the CAA. These revisions improve the Albuquerque/Bernalillo County SIP and update 20.11.8 NMAC to add new standards and revise existing NAAQS in 20.11.8 NMAC to be consistent with 40 CFR Part 50—National Primary and Secondary Ambient Air Quality Standards.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 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, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 5, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

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 GG—New Mexico

■ 2. Amend § 52.1620 by:

■ a. Amending the second table in paragraph (c) entitled ''EPA-Approved Albuquerque/Bernalillo County, NM Regulations'' as follows:

■ i. Revising the entry for Part 8 (20.11.8 NMAC) under the heading ''New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board''; and

■ ii. Revising the entry for Part 61 (20.11.61 NMAC) under the heading ''New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board''.

■ b. Amending the second table in paragraph (e) entitled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' by adding a new entry for ''Infrastructure and Interstate Transport for the 1997 and 2008 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS'' at the end of the table.

The additions and revisions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

* * * * *

EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA Approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
*	*	*	*	*
Part 8 (20.11.8 NMAC).	Ambient Air Quality Standards	8/12/2009	8/19/2012, [Insert FR page number where document begins].	

EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS—Continued

State citation	Title/subject	State approval/ effective date	EPA Approval date	Explanation
*	*	*	*	*
Part 61 (20.11.61 NMAC).	Prevention of Significant Deterioration ..	1/10/2011	8/19/2012, [Insert FR page number where document begins].	
*	*	*	*	*

(e) * * *

* * * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure and Interstate Transport regarding noninterference with other states' programs for PSD for the 1997 and 2008 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS.	Bernalillo County	8/16/2010	8/19/2012, [Insert FR page number where document begins].	Approval for 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

■ 3. Amend § 52.1634 by revising paragraph (c) to read as follows:

§ 52.1634 Significant deterioration of air quality.

* * * * *

(c) The plan submitted by the Governor in paragraph (a) of this section for Prevention of Significant Deterioration is not applicable to Bernalillo County. Therefore, the following plan described below is applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque). This plan, submitted by the Governor of New Mexico on April 14, 1989, August 7, 1989, May 1, 1990, May 17, 1993, May 24, 2006, August 16, 2010, and December 15, 2010 and respectively adopted on March 8, 1989, July 12, 1989, April 11, 1990, February 10, 1993, December 22, 2005, April 13, 2006, July 28, 2010, and December 10, 2010, by the Albuquerque/Bernalillo County Air Quality Control Board, containing Part 61—Prevention of Significant Deterioration is approved as meeting the requirements of part C of the Clean Air Act for the prevention of significant deterioration of air quality.

[FR Doc. 2012–22975 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2011–0111; FRL–9729–5]

RIN–2060–AQ84

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to list substitutes for ozone-depleting substances (ODSs) in the fire suppression and explosion protection sector as acceptable subject to use restrictions under the EPA's Significant New Alternatives Policy program. This program implements Section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ozone-depleting substances and find them acceptable where they pose comparable or lower overall risk to human health and the environment than other available substitutes.

DATES: This rule is effective on December 18, 2012 without further notice, unless EPA receives adverse comment or receives a request for a public hearing on or before October 19, 2012. If EPA receives adverse comment or receives a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0111, by one of the following methods:

- *Email: a-and-r-Docket@epa.gov.*
- *Mail:* OAR Docket and Information Center, U.S. Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. To expedite review, a second copy of the comments should be sent to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT**.
- *Hand Delivery:* Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. 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–2011–0111. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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, 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 through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, 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 and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9749; fax number: (202) 343–2363; email address: *maranion.bella@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** we are publishing a separate document that will serve as the proposed rule if adverse comments are received or a public hearing is requested on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time. We would address all public comments in a subsequent final rule based on the proposed rule.

The regulations implementing the Significant New Alternatives Policy (SNAP) program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ozone-depleting substances (ODSs) for specific end uses as unacceptable or acceptable with certain restrictions imposed on their use. In addition, a list of acceptable substitutes without restrictions is available at *http://www.epa.gov/ozone/snap/lists/index.html.* The action in this direct final rule will add a total of three fire suppression agents to the SNAP list of acceptable substitutes in the appendices to subpart G: two fire suppression agents are added to the list of substitutes for halon 1301 that are acceptable subject to use conditions and one fire suppression agent is added to the list of substitutes for halon 1211 that are acceptable subject to narrowed use limits. This action does not place any significant burden on the regulated community but lists as acceptable, subject to use restrictions, three new halon substitutes. The restrictions will ensure that these substitutes will not pose a greater risk to human health or the environment than other potentially available substitutes in the fire suppression end use.

This direct final rule regulates the use of Powdered Aerosol F (KSA®) and Powdered Aerosol G (Dry Sprinkler Powdered Aerosol (DSPA) Fixed Generators) by finding them acceptable subject to use conditions as substitutes for halon 1301 for use in total flooding fire suppression systems in normally unoccupied spaces. This action also finds C7 Fluoroketone acceptable subject to narrowed use limits as a substitute for halon 1211 for use as a streaming agent in portable fire extinguishers in nonresidential applications. Halons are chemicals that were once widely used in the fire protection sector but have been banned from production in the U.S. since 1994 because their emissions into the atmosphere are highly destructive to the stratospheric ozone layer. This action will provide users that need specialized fire protection applications with more alternatives to the use of halons. Businesses that may be regulated, either through manufacturing, distribution, installation and servicing, or use of the fire suppression equipment containing the substitutes are listed in the table below:

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS code	Description of regulated entities
Construction	238210	Alarm system (e.g., fire, burglar), electric, installation only.
Manufacturing	325998	Fire extinguisher chemical preparations manufacturing.
Manufacturing	332919	Nozzles, fire fighting, manufacturing.
Manufacturing	334290	Fire detection and alarm systems manufacturing.
Manufacturing	336611	Shipbuilding and repairing.
Manufacturing	339999	Fire extinguishers, portable, manufacturing.
Manufacturing	336411	Aircraft manufacturing.
Manufacturing	336413	Other aircraft parts and auxiliary equipment manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of Section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes is found at *http://www.epa.gov/ozone/snap/lists/index.html,* and the lists of ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' substitutes are found in the appendices to subpart G of 40 CFR part 82.
- *Petition Process*—Section 612(d) grant the right to any person to petition EPA to add a substitute to, or delete a substitute from, the lists published in accordance with Section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-Day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (subpart G of 40 CFR part 82). These sectors include: refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to list as acceptable those substitutes that do not present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I substance or class II substance in one of the eight major industrial use sectors must provide notice to the Agency, including health and safety information on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. 40 CFR 82.176(a). This requirement applies to the persons planning to introduce the substitute into interstate commerce,[1] which typically are chemical manufacturers but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.[2] The 90-day SNAP review process begins once EPA receives the submission and determines that the submission includes complete and adequate data (40 CFR 82.180(a)). As required by the CAA, the SNAP regulations, 40 CFR 82.174(a), prohibit the introduction of a substitute into interstate commerce earlier than 90 days after notice has been provided to the Agency.

The Agency has identified four possible decision categories for substitutes that are submitted for evaluation: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable[3] (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use

[1] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[2] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

[3] The SNAP regulations also include ''pending,'' referring to submissions for which EPA has not reached a determination, under this provision.

restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses within the sector. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of EPA's SNAP regulations. 40 CFR 82.174(c).

For some substitutes, the Agency may permit a narrow range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in an unacceptable manner and is in violation of section 612 of the CAA and EPA's SNAP regulations. 40 CFR 82.174(c).

The Agency publishes its SNAP program decisions in the **Federal Register** (FR). EPA first publishes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or substitutes deemed unacceptable, as proposed rulemakings to allow the public opportunity to comment, before publishing final decisions.

In contrast, EPA publishes decisions concerning substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the preamble to the rule initially implementing the SNAP program (59 FR 13044; March 18, 1994), EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''Comments'' or ''Further Information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (e.g., worker protection regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA)). The ''Further Information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of the substitute. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes and standards. Thus, many of the comments, if adopted, would not require the affected user to make significant changes in existing operating practices.

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Layer Protection Web site at *www.epa.gov/ozone/snap/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the March 18, 1994, SNAP final rulemaking (59 FR 13044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations are found at *http://www.epa.gov/ozone/snap/chron.html.*

II. Listing Decision: Fire Suppression and Explosion Protection

A. Total Flooding: Powdered Aerosol F (KSA®)—Acceptable Subject to Use Conditions

EPA's Decision: EPA Finds Powdered Aerosol F Acceptable Subject to Use Conditions as a Substitute for Halon 1301 for Use in Total Flooding Fire Suppression Systems in Normally Unoccupied Spaces

Powdered Aerosol F is acceptable, subject to use conditions, as a halon 1301 substitute for total flooding uses. As requested by the submitter, the use condition requires that Powdered Aerosol F be used only in areas that are not normally occupied. Powdered Aerosol F is used as a fire suppression agent in an aerosol fire-extinguishing system. It may be marketed under the name KSA®.

The submitter has claimed the composition of Powdered Aerosol F as confidential business information (CBI). You may find the submission under docket EPA–HQ–OAR–2011–0111 at *http://www.regulations.gov.*

Environmental information: EPA has reviewed the potential environmental impacts of this substitute. The active ingredients for this technology are solids before and fine solid particulates after use; therefore, the ozone depletion potential (ODP), global warming potential (GWP), and atmospheric lifetime (ALT) are zero. Thus, Powdered Aerosol F is not expected to pose any significant adverse impacts on the ozone layer or climate.

All manufacturing occurs in a facility with strict controls on all raw materials and processes, so minimal release to the ambient air is expected during the manufacturing process. Because installation and servicing occur at very large sites, releases in such locations are expected to be well below the acceptable exposure limits. In the event of a fire, Powdered Aerosol F is dispersed as fine solid particulates, reacting to the heat to suppress the fire. The constituents of Powdered Aerosol F are not volatile organic compounds (VOCs). If all spilled and settled material in the manufacturing facility and all on-site (installation, servicing, and system discharge) releases are cleaned up and disposed of according to federal, state, and local requirements, consistent with the material safety data sheet (MSDS), no release to the environment is expected.

Toxicity and exposure data: EPA evaluated occupational and general population exposure at manufacture and at end use to ensure that the use of Powdered Aerosol F will not pose unacceptable risks to workers or the general public. This risk screen is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on Substitute for Halon 1301 Total Flooding Systems in Unoccupied Spaces Substitute: Powdered Aerosol F (KSA®).'' In particular, the risk screen considered the highly respirable nature of the substitute as well as the potential effect of increased blood pH from inhalation of the substitute. As discussed below, the use of proper personal protective equipment (PPE) during manufacturing, at installation, maintenance, and clean-up minimizes personnel exposure from inhalation of the substitute. Blood pH modeling also indicates that the levels of the constituent in Powdered Aerosol F affecting blood pH are not expected to pose a health risk. Based on this evaluation, EPA recommends the following specifications for filling containers or installing total flooding fire suppression systems with this agent:

—Appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn during the manufacture, clean up, and disposal of this agent.

—Appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn during the installation and maintenance of the extinguishing units filled with the agent.
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent. Use of this agent should be in accordance with the safety guidelines in the latest edition of the National Fire Protection Association (NFPA) 2010 Standard for Aerosol Extinguishing Systems.

The post activation product of Powdered Aerosol F is entirely particulates, and as indicated by the submitter, of a fine size which makes it highly respirable. A constituent of Powdered Aerosol F, despite having low toxicity, can pose a human health risk because it can raise blood pH level if inhaled in sufficient quantities. The potential to increase blood pH is not considered a significant adverse health effect because the body can restore the pH to normal range. Using information provided by the submitter, we modeled a reasonable worst-case accidental release (without a fire), exposing maintenance personnel to the maximum design concentration provided by the submitter. Blood pH modeling indicates that Powdered Aerosol F is not expected to pose a significant health risk. This calculation and the assumptions for respirable amounts and releases of Powdered Aerosol F are included in the risk screen conducted for this substitute and are available in the docket for this rule. While the levels of soluble particles of Powdered Aerosol F are not expected to pose a significant health risk, EPA recommends the following:

—Releases in all settings should be limited to an appropriate design concentration for the protected space so that increased pH level would not adversely affect exposed individuals; exposed individuals should be given an electrolyte solution to drink afterwards to restore the pH within the appropriate range;
—Users should provide special training to individuals required to be in environments protected by Powdered Aerosol F extinguishing systems; each container of the Powdered Aerosol F should be clearly labeled with the potential hazards from use and safe handling procedures; and
—In the case of an accidental spill, the area should be well-ventilated, and workers should wear protective equipment while following good industrial hygiene practices for clean-up and disposal.

The MSDS contains similar requirements with regard to safe handling, protection from, and clean-up of Powdered Aerosol F.

Use of Powdered Aerosol F should conform to relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR Part 1910, Subpart L, Sections 1910.160 and 1910.162. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event that personnel re-enter the area after Powdered Aerosol F has been discharged.

Comparison to other fire suppressants: According to the submitter, the active ingredients for Powdered Aerosol F are solids before and fine solid particulates after use. The post-activation products of Powdered Aerosol F have an ODP and a GWP of zero, which is comparable to or less than that for other non-ozone depleting substitutes for halon 1301, such as Inert Gas 100, HFC–227ea or HFC–125, with GWPs of zero, 3220, and 3500, respectively.[4] Toxicity risks are low as discussed above. We find that Powdered Aerosol F is acceptable for use in normally unoccupied spaces because it poses comparable or lower overall risk to public health and the environment than the other available substitutes for the same end use.

B. Total Flooding: Powdered Aerosol G (Dry Sprinkler Powdered Aerosol (DSPA) Fixed Generators)—Acceptable Subject to Use Conditions

EPA's Decision: EPA Finds Powdered Aerosol G (DSPA Fixed Generators) Acceptable as a Substitute for Halon 1301 for Total Flooding Uses in Normally Unoccupied Spaces

Powdered Aerosol G is acceptable, subject to use conditions, as a halon 1301 substitute for total flooding uses. As requested by the submitter, the use condition requires that Powdered Aerosol G be used only in areas that are normally unoccupied. Powdered Aerosol G is a solid material in pellet form, which aerosolizes upon activation, and housed in various-sized generator units. Depending on the fire suppression requirement, a single generator or several generators may be used in the protected space. When electrically or thermally activated, Powdered Aerosol G produces combustion by-products (micron-sized particles and a gaseous mixture of primarily nitrogen (N_2, CAS Reg. No. 7727–37–9)) that mix together into a uniform fire extinguishing aerosol before being released into the protected area. The released inert gases extinguish a fire in the space by displacing the oxygen available for combustion and reducing the heat of the combustion source. The submitter has claimed the composition of Powdered Aerosol G as CBI. You may find the submission under docket EPA–HQ–OAR–2011–0111 at *http://www.regulations.gov.*

Environmental information: The pre-activation constituents of Powdered Aerosol G are solids before use and therefore have zero ODP and zero GWP. Further, the ODP of each of the post-activation constituents of Powdered Aerosol G is zero, and the GWPs of post-activation constituents are 1 or less.

Of the organic constituents of Powdered Aerosol G, only hydrogen cyanide (a post-activation product) has not been exempted as a VOC as defined under CAA regulations (40 CFR 51.100(s)); however, it constitutes approximately $5x10^{-3}$ percent of the post-activation products by weight which is a very small amount. VOC emissions from the production of the generators containing Powdered Aerosol G are controlled through standard industry practices, and as such, VOC emissions from manufacture are expected to be minimal. Potential emissions of VOCs from the use of Powdered Aerosol G in the fire extinguishing and explosion prevention sector are likely to be insignificant relative to VOCs from all other sources (i.e., other industries, mobile sources, and biogenic sources). An assessment was performed to compare the annual VOC emissions from use of Powdered Aerosol G in total flooding systems produced in one year to other anthropogenic sources of VOC emissions. This assessment is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on Substitute for Halon 1301 Total Flooding Systems in Unoccupied Spaces, Substitute: Powdered Aerosol G (Dry Sprinkler Powdered Aerosol (DSPA) Fixed Generators).'' Assuming that 100 percent of Powdered Aerosol G produced in one year[5] were to be used

[4] IPCC, 2007: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. This document is accessible at *http://www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.*

[5] Maximum total production per year at market saturation figure is based on DSPA SNAP submission.

in fire occurrences and thus released to the atmosphere (extremely unlikely), only 0.04 metric tonnes of VOCs would be emitted, which is approximately equal to $8.6x10^{-6}$ percent of the annual VOC emissions caused by fires,[6] or only about $1.5x10^{-6}$ percent of annual VOC emissions caused by highway vehicles.[7] This assessment finds that even at an unlikely release rate of 100 percent, the VOC emissions from use of Powdered Aerosol G are several orders of magnitude lower than other anthropogenic emissions; therefore, the environmental impacts of these VOCs are not considered a significant risk to local air quality.

Toxicity and exposure data: EPA evaluated occupational and general population exposure at manufacture and at end use to ensure that the use of Powdered Aerosol G will not pose unacceptable risks to workers or the general public. This risk screen is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on Substitute for Halon 1301 Total Flooding Systems in Unoccupied Spaces, Substitute: Powdered Aerosol G (Dry Sprinkler Powdered Aerosol (DSPA) Fixed Generators).''

Exposure to the DSPA generator upon activation may result in irritation if inhalation, ingestion, skin contact, or eye contact occurs. Exposure to an aerosol suppression agent may cause temporary, mild irritation of mucous membranes if inhaled and may cause slight irritation of the skin. In the event of an accidental discharge, the room should be immediately evacuated and the instructions listed in the MSDS for Powdered Aerosol G should be followed. Workers should not enter the space following discharge until all particles have settled and/or been ventilated and the gases released by the system have dissipated.

EPA finds that the use of the exposure controls discussed in the following sections and adherence with the appropriate occupational safety guidelines and requirements in the manufacturer's MSDS are sufficient to ensure that the manufacture, installation, maintenance, and cleanup of Powdered Aerosol G do not pose a risk to human health. Likewise, no consumer exposure is expected because Powdered Aerosol G systems are designed for use in commercial and industrial applications only in normally unoccupied spaces.

Powdered Aerosol G is not expected to pose a risk to workers during manufacture due to an automated production process. The only place where workers may be exposed to the constituents is during the loading of the processing vessel/mixer, which accounts for less than 10 minutes of the production time. According to the submitter, these workers wear PPE including protective suits, safety glasses, and respirators. The entire manufacturing space is ventilated with a local exhaust system to reduce airborne exposure of the Powdered Aerosol G constituents. The submitter reported to EPA that manufacture of Powdered Aerosol G pellets and generators does not take place in the United States. Only the final product, the Powdered Aerosol G generator unit, consisting of the rigid steel case containing solid blocks of the Powdered Aerosol G extinguishing compound is sold in the United States. In the ''Further Information'' columns of the tables summarizing today's listing decisions, EPA recommends the following for establishments filling, installing, or servicing generator units or systems to be used in total flooding applications:

—Appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn during the manufacture, clean up, and disposal of this agent as well as during the installation and maintenance of the generator units filled with the agent;

—Training for safe handling procedures should be provided to all employees that would be likely to handle the agent or the generator units containing the agent; and

—Use of this agent should be in accordance with the safety guidelines in the latest edition of the National Fire Protection Association (NFPA) 2010 Standard for Aerosol Extinguishing Systems.

Powdered Aerosol G generators are not expected to pose a risk to workers during installation, maintenance, and cleanup. In accordance with Department of Health and Human Services regulations (42 CFR part 84), safety glasses and a NIOSH/CDC-approved N99 respirator are required for individuals installing Powdered Aerosol G fixed systems. In the event of an accidental discharge, the manufacturer's MSDS should be followed, including the use of a NIOSH N99 respirator and goggles. For cleanup operations, workers should not enter the space after discharge until all particles have settled and/or been ventilated and the gases released by the system have dissipated. Workers entering the space before it has been ventilated should wear protective clothing, goggles, and a self-contained breathing apparatus (SCBA). In accordance with the MSDS, EPA recommends the following:

—The post-activation products of Powdered Aerosol G should be collected by hand (e.g., with a dustpan and duster or a vacuum cleaner);

—Waste should be collected in suitable drums for disposal and the area should be washed clean with sufficient quantities of water;

—Employers should provide special training to workers required to clean up after discharge or required to work near spaces protected by Powdered Aerosol G fixed generator total flooding systems;

—Each Powdered Aerosol G generator unit should be clearly labeled with the potential hazards of use and with safe handling procedures; and

—In the case of an accidental discharge, the area should be well-ventilated, and workers should wear protective equipment while following good industrial hygiene practices for clean-up and disposal.

Use of Powdered Aerosol G generators should conform to relevant OSHA requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event that personnel re-enter the area before the particles have settled (approximately 30–40 minutes after discharge) or before the space has been ventilated.

Comparison to other fire suppressants: The post-activation products of Powdered Aerosol G have ODPs of zero and GWPs of 1 or less, comparable to or less than that for other non-ozone depleting substitutes for halon 1301, such as Inert Gas 100, HFC–227ea or HFC–125, with GWPs of zero, 3220, and 3500, respectively.[8] Toxicity risks are low when used in normally unoccupied areas for commercial and industrial specialty fire protection applications. We find that Powdered Aerosol G is acceptable for use in normally unoccupied areas because it poses comparable or lower overall risk to public health and the environment than the other substitutes acceptable in

[6] Based on 2010 projections calculated using 2008 EPA annual VOC emissions data for residential wood burning and agricultural field burning (EPA 2008 and EPA 2011) and ICF assumptions.

[7] Based on 2010 projections calculated using 2008 EPA annual VOC emissions data (EPA 2009) and ICF assumptions.

[8] IPCC, 2007.

the end use listed above when used in accordance with the use condition.

C. Streaming: C7 Fluoroketone—Acceptable Subject to Narrowed Use Limits

EPA's decision: EPA Finds C7 Fluoroketone Is Acceptable Subject to Narrowed Use Limits as a Substitute for Halon 1211 for Use as a Streaming Agent. The Narrowed Use Limits Require That C7 Fluoroketone Be Used Only in Nonresidential Applications

C7 Fluoroketone is also known as C7 FK or FK–6–1–14. This substitute is a blend of two isomers, 3-pentanone,1,1,1,2,4,5,5,5-octafluoro-2,4-bis(trifluoromethyl) (Chemical Abstracts Service Registry Number [CAS Reg. No.] 813–44–5) and 3-hexanone,1,1,1,2,4,4,5,5,6,6,6-undecafluoro-2-(trifluoromethyl) (CAS Reg. No. 813–45–6). You may find the submission under docket EPA–HQ–OAR–2011–0111 at *http://www.regulations.gov.*

Environmental information: C7 Fluoroketone has zero ODP and a GWP of approximately 1. Therefore, C7 Fluoroketone is not expected to pose any significant adverse impact on the ozone layer or climate.

The physicochemical properties of the majority of halon substitutes make it unlikely that the substitutes would be released to surface water as a result of use. In the case of C7 Fluoroketone, the proposed substitute is insoluble in water and readily volatilizes. Thus, EPA expects that all of the constituents would rapidly vaporize during expulsion from the container, would not be likely to settle, and therefore would be unlikely to lead to surface water contamination or generation of solid waste.

C7 Fluoroketone has not been exempted as a VOC under the CAA (40 CFR 51.100(s)). VOC emissions from the production of portable extinguishers charged with C7 Fluoroketone are controlled through standard industry practices, and as such, emissions from manufacture of units are likely to be minimal. An assessment was performed to compare the annual VOC emissions from use of C7 Fluoroketone in portable extinguishers in one year to other anthropogenic sources of VOC emissions. This assessment is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on Substitute for Halon 1211 as a Streaming Agent in Portable Fire Extinguishers Substitute: C7 Fluoroketone.'' This assessment finds that even if the entire portion for streaming agent applications of the allowable quantity of C7 FK produced by the submitter in one year was all released to the atmosphere (extremely unlikely), the resulting VOC emissions would be approximately equal to 3.0×10^{-2} percent of annual VOC emissions caused by fires,[9] or only about 1.1×10^{-3} percent of all annual anthropogenic VOC emissions.[10] As these emissions are several orders of magnitude less than other anthropogenic emissions, the environmental impacts of these VOCs are not considered a significant risk to local air quality.

Toxicity and exposure data: Inhalation of C7 Fluoroketone could cause respiratory tract irritation and symptoms may include cough, sneezing, nasal discharge, headache, hoarseness, and nose and throat pain. Contact with the eyes and/or skin during product use is not expected to result in significant irritation. Ingestion of C7 Fluoroketone is not expected to cause health effects, and there is no anticipated need for first aid if C7 Fluoroketone is ingested. The potential health effects of C7 Fluoroketone can be minimized by following the exposure guidelines and recommendations for ventilation and PPE outlined in the MSDS and discussed further below.

EPA evaluated occupational and general population exposure at manufacture and at end use to ensure that the use of C7 Fluoroketone will not pose unacceptable risks to workers or the general public. This risk screen is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on Substitute for Halon 1211 as a Streaming Agent in Portable Fire Extinguishers Substitute: C7 Fluoroketone.''

EPA is providing the following additional information regarding use of C7 Fluoroketone as a streaming agent in nonresidential applications. Appropriate protective measures should be taken and proper training administered for the manufacture, clean-up and disposal of this product. For this new chemical, the manufacturer developed an acceptable exposure limit (AEL) for the workplace set at a level believed to protect from chronic adverse health effects those workers who are regularly exposed, such as in the manufacturing or filling processes. EPA reviewed the submitter's supporting data and accepts the manufacturer's AEL for C7 Fluoroketone of 225 ppm over an 8-hour time-weighted average.[11] EPA recommends the following for establishments filling canisters to be used in streaming applications:

—Adequate ventilation should be in place;
—All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent.

EPA anticipates that C7 Fluoroketone will be used consistent with the recommendations specified in the manufacturer's MSDS.

EPA recommends use of C7 Fluoroketone as a streaming agent in accordance with the latest edition of NFPA Standard 10 for Portable Fire Extinguishers. We expect that users will be able to meet the recommended workplace exposure limit and address potential health risks by following the above recommendations, using the substitute in accordance with the manufacturer's MSDS, and following other safety precautions common to the fire protection industry.

Comparison to other fire suppressants: C7 Fluoroketone is not ozone-depleting with a GWP of 1 in contrast to halon 1211 (with an ODP of 7.1 and a GWP of 1890), the ODS which it replaces. Compared to other substitutes for halon 1211, such as HCFC Blend B (with ODP of roughly 0.01 and GWP of roughly 80), HFC–227ea (with ODP of 0 and GWP of 3220), and HFC–236fa (with an ODP of 0 and GWP of 9810), C7 Fluoroketone has a similar or less significant impact on the ozone layer and climate. Risk to the general population is expected to be negligible provided that the substitute is not used in residential applications as requested by the submitter and as established under the narrowed use limits. Occupational exposure should not pose a problem if use is in accordance with the manufacturer's MSDS and other precautions normally used in the fire protection industry. Thus, we find that C7 Fluoroketone is acceptable subject to narrowed use limits because the overall environmental and human health risk posed by C7 Fluoroketone is lower than or comparable to the risks posed by

[9] Based on 2010 projections calculated using 2008 EPA annual VOC emissions data for residential wood burning and agricultural field burning (EPA 2008 and EPA 2011) and ICF assumptions.

[10] Based on 2010 projections calculated using 2008 EPA annual VOC emissions data (EPA 2009) and ICF assumptions.

[11] ''Determination of an AEL for C7 Fluoroketone (C7 FK),'' Appendix A to Risk Screen on Substitute for Halon 1211 as a Streaming Agent in Portable Fire Extinguishers Substitute: C7 Fluoroketone. Available in docket EPA–HQ–OAR–2011–0111.

other available substitutes in the same end use.

III. Statutory and Executive Order Reviews

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

OMB notified EPA on May 5, 2011, that it considers this action not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and it is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule is an Agency determination. It contains no new requirements for reporting. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.08). The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes 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 impact of today's rule on small entities, small entities are defined as (1) a small business that produces or uses fire suppressants as total flooding and/or streaming agents with 500 or fewer employees or total annual receipts of $5 million or less; (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.

After considering the economic impacts of today's 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 beyond current industry practices. Today's action effectively supports the introduction of three new alternatives to the market for fire protection extinguishing systems, thus providing additional options for users making the transition away from ozone-depleting halons.

Use of halon 1301 total flooding systems and halon 1211 streaming agents have historically been in specialty fire protection applications including essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon system and equipment owners continue to maintain and refurbish existing systems since halon supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. Thus, EPA is providing more options to any entity, including small entities, by finding substitutes acceptable for use. The use restrictions imposed on the substitutes in today's rule are consistent with the applications suggested by the submitters and with current industry practices. Therefore, we conclude that the rule does not impose any new cost on businesses.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing three new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the NFPA, which conducts regular outreach with small entities and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This 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 direct final rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, so this action will not affect small governments.

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 regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175. It 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. It does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are discussed in section II.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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 rulemaking does not involve setting technical standards. EPA defers to existing NFPA voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the latest edition of NFPA 2010 Standard on Aerosol Extinguishing Systems which provides for safe use of aerosol extinguishing agents and technologies and NFPA 10 Standard for Portable Fire Extinguishers. Copies of these standards may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555. The NFPA 2010 standards meet the objectives of the rule by setting scientifically-based guidelines for safe exposure to halocarbon and inert gas agents and aerosol extinguishing agents, respectively. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This direct final rule would provide fire suppression substitutes that have no ODP and low or no GWP. The avoided ODS and GWP emissions would assist in restoring the stratospheric ozone layer, avoiding adverse climate impacts, and result in human health and environmental benefits.

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. 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 December 18, 2012.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: September 11, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. Subpart G of part 82 is amended by adding Appendix S to read as follows: Appendix S to Subpart G of Part 82—Substitutes Listed in the September 19, 2012 Final Rule, Effective December 18, 2012.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-Use	Substitute	Decision	Conditions	Further information
Total Flooding	Powdered Aerosol F (KSA®) as a substitute for Halon 1301.	Acceptable subject to use conditions.	For use only in normally unoccupied areas.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 standard for Aerosol Extinguishing Systems. For establishments filling, installing, servicing, using, or disposing of containers or systems to be used in total flooding applications, EPA recommends the following: —appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn during the installation and maintenance of the extinguishing units filled with the agent or during clean up and disposal of this agent; —training should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent, required to clean up after discharge or required to work near spaces protected by Powdered Aerosol F. Releases in all settings should be limited to an appropriate design concentration for the protected space so that increased blood pH level would not adversely affect exposed individuals. Exposed individuals should be given an electrolyte solution to drink afterwards to restore the pH within the appropriate range. Each extinguisher should be clearly labeled with the potential hazards from use and safe handling procedures. In the case of an accidental spill, the area should be well-ventilated, and workers should wear protective equipment while following good industrial hygiene practices for clean-up and disposal. See additional comments 1, 2, 3, 4.
Total Flooding	Powdered Aerosol G (Dry Sprinkler Powdered Aerosol (DSPA) Fixed Generators) as a substitute for Halon 1301.	Acceptable subject to use conditions.	For use only in normally unoccupied areas.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 standard for Aerosol Extinguishing Systems. For establishments filling, installing, servicing, using or disposing of generator units or systems in total flooding applications, EPA recommends the appropriate protective clothing (e.g., goggles, particulate removing respirators, and gloves) should be worn during the installation and maintenance of the extinguishing units filled with the agent or during clean up and disposal of this agent. Powdered Aerosol G should be collected by hand (e.g., with a dustpan and duster or a vacuum cleaner); waste should be collected in suitable drums for disposal and the area should be washed clean with sufficient quantities of water; and training should be provided to all employees that would be likely to handle the agent or generator units filled containing the agent, required to clean up after discharge or required to work near spaces protected by Powdered Aerosol G fixed generator total flooding systems. In accordance with Department of Health and Human Services regulations (42 CFR Part 84), safety glasses and a NIOSH/CDC-approved N99 respirator are required for individuals installing Powdered Aerosol G fixed systems. Each generator unit should be clearly labeled with the potential hazards from use and safe handling procedures. In the case of an accidental discharge, the area should be well-ventilated, and workers should wear protective equipment while following good industrial hygiene practices for clean-up and disposal. See additional comments 1, 2, 3, 4.

Additional comments:

1—Should conform to relevant OSHA requirements, including 29 CFR 1910, Subpart L, Sections 1910.160 and 1910.162.

2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.

3—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

4—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-Use	Substitute	Decision	Conditions	Further information
Streaming	C7 Fluoroketone as a substitute for Halon 1211.	Acceptable subject to narrowed use limits.	For use only in non-residential applications.	Use of this agent should be in accordance with the latest edition of NFPA Standard 10 for Portable Fire Extinguishers. For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventilation should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. See additional comments 1, 2, 3, 4.

Additional comments:
1—Should conform to relevant OSHA requirements, including 29 CFR 1910, Subpart L, Sections 1910.160 and 1910.162.
2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
4—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

[FR Doc. 2012–23138 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0569; FRL–9361–5]

Clopyralid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clopyralid in or on multiple commodities which are identified and discussed later in this document. This regulation additionally removes several established individual tolerances, as they will be superseded by inclusion in subgroup tolerances. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 19, 2012. Objections and requests for hearings must be received on or before November 19, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0569, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; email address: *Nollen.Laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0569 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 19, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0569, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerances

In the **Federal Register** of August 26, 2011 (76 FR 53372) (FRL–8884–9), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7882) by IR–4, 500 College Road East, Suite 201W., Princeton, NJ 08540. The petition requested that 40 CFR 180.431 be amended by establishing tolerances for residues of the herbicide clopyralid, (3,6-dichloro-2-pyridinecarboxylic acid), in or on apple at 0.05 parts per million (ppm); brassica, leafy greens, subgroup 5B at 5.0 ppm; rapeseed subgroup 20A, except gold of pleasure, seed at 3.0 ppm; rapeseed subgroup 20A, except gold of pleasure, meal at 6.0 ppm; and rapeseed subgroup 20A, except gold of pleasure, forage at 3.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR–4 by Dow AgroSciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Additionally, in the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8013) by IR–4. The petition requested that 40 CFR 180.431 be amended by establishing tolerances for residues of the herbicide clopyralid, (3,6-dichloro-2-pyridinecarboxylic acid), in or on teff, forage at 9.0 ppm; teff, grain at 3.0 ppm; teff, straw at 9.0 ppm; and teff, hay at 9.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR–4 by Dow AgroSciences, the registrant, which is available in docket ID number EPA–HQ–OPP–2012–0309, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the proposed tolerance on rapeseed subgroup 20A, except gold of pleasure, forage is not necessary. Additionally, EPA has determined that several established tolerances should be removed. Finally, the Agency determined that the proposed tolerance on rapeseed subgroup 20A, except gold of pleasure, meal should be established as a tolerance on rapeseed, meal. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Clopyralid has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not a dermal irritant or sensitizer, but it is a severe eye irritant in its acid form. No consistent mammalian target organ was identified in the clopyralid toxicological studies submitted to the Agency. Effects were noted in various organs and systems in different species, including increases in liver weight, changes in clinical chemistry and blood cell parameters, skin lesions, and decreases in body weight gain.

In subchronic mouse studies, decreased body weights were observed in males and females. Following chronic exposure, effects in dogs included reductions in red blood cell parameters, increased liver weight (males), and vacuolated adrenal cortical cells (females). Additionally, skin lesions and clinical chemistry changes (decreased serum glucose, protein, and albumin) were observed at the highest dose tested. In the rat, epithelial hyperplasia, thickening of the limiting ridge of the stomach, and decreased body weight were observed following chronic exposure. There were no clinical indications of neurotoxicity or immunotoxicity in the subchronic or chronic toxicity studies.

No developmental toxicity was observed in the rat at doses that caused maternal mortality and decreased body weight gains. In the rabbit developmental toxicity study, decreased fetal body weights and hydrocephalus were observed at a dose that caused severe maternal toxicity including a high rate of mortality, clinical signs of toxicity, decreased body weight gains, and gastric mucosal lesions. Reproductive toxicity was not observed in the rat, but mean pup weight reductions and relative liver weight increases were observed at doses that caused parental toxicity (decreased body weight/weight gain and food consumption and gastric lesions).

There was no evidence of carcinogenic potential in the rat and mouse 2-year carcinogenicity studies. Further, there were no positive findings for mutagenicity or clastogenicity observed in a battery of mutagenicity studies (including bacterial reverse gene mutation, *in vitro* and *in vivo* host-mediated assays in *Salmonella* and *Saccharomyces, in vivo* chromosomal aberrations, unscheduled DNA synthesis, and dominant lethal activity studies). Based on the results of these studies, EPA has determined that clopyralid is ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by clopyralid as well as the no-observed-adverse-effect-level

(NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Clopyralid. Human Health Risk Assessment for New Uses on Apples, Teff, Brassica Leafy Greens, and Rapeseed'' at pages 32–35 in docket ID number EPA–HQ–OPP–2011–0569.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for clopyralid used for human risk assessment is shown in Table 1 of this unit. EPA notes that in the last final rule for clopyralid, published in the **Federal Register** of March 24, 2010 (75 FR 14086) (FRL–8814–2), the Agency identified an acute dietary toxicological POD based on decreased maternal body weight in the rat developmental toxicity study. However, upon reevaluation of the toxicological database for clopyralid, EPA determined that the effect is not the result of a single dose, and is not appropriate for an acute dietary endpoint. Additionally, while the last final rule included endpoints and points of departure for intermediate-term residential scenarios, including postapplication incidental oral exposure for children, the Agency has reevaluated this scenario and has determined that for clopyralid, residential exposure to children on turf is not likely to occur over an intermediate-term duration (i.e., 1 month to 6 months). Further, intermediate-term exposures are not expected for residential handlers, based on the use pattern.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CLOPYRALID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age and general population, including infants and children).	An appropriate endpoint for a single exposure was not identified.		
Chronic dietary (All populations)	NOAEL = 15 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.15 mg/kg/day cPAD = 0.15 mg/kg/day	2-Year Combined Chronic Toxicity/Carcinogenicity (oral)—rat LOAEL = 150 mg/kg/day based on increased epithelial hyperplasia and thickening of the limiting ridge of the stomach in both sexes.
Incidental oral short-term (1 to 30 days).	NOAEL = 75 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Toxicity (oral)—rat LOAEL = 250 mg/kg/day based on decreased body weight gain and food consumption during gestation days 6–9.
Inhalation short-term (1 to 30 days).	Inhalation (or oral) study NOAEL = 75 mg/kg/day. (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Toxicity (oral)—rat LOAEL = 250 mg/kg/day based on decreased body weight gain and food consumption during gestation days 6–9.
Cancer (Oral, dermal, inhalation).	''Not likely to be carcinogenic to humans.'' Cancer risk is not of concern.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clopyralid, EPA considered exposure under the petitioned-for tolerances as well as all existing clopyralid tolerances in 40 CFR 180.431. EPA assessed dietary exposures from clopyralid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for clopyralid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intakes by

Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT) estimates, and DEEM™ ver. 7.81 default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that clopyralid does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for clopyralid. Tolerance level residues or 100 PCT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST) model, the estimated drinking water concentration (EDWC) of clopyralid for chronic exposures is estimated to be 11.9 parts per billion (ppb) for surface water. The Agency also considered available monitoring data from the United States Geological Survey (USGS) National Water Quality Assessment Data Warehouse (*http://water.usgs.gov/nawqa/*) for clopyralid. For ground water monitoring data, the peak observed value for detectable levels of clopyralid was 0.5288 ppb (Oregon) with a nationwide mean value of 0.065 ppb. Therefore, the EDWC of clopyralid for chronic exposures is estimated to be 0.5288 ppb for ground water.

For chronic dietary risk assessment, the water concentration of value 11.9 ppb was used to assess the contribution to drinking water.

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

Clopyralid is currently registered for use on lawns, turf, and ornamentals in residential and public areas, which could result in residential exposures. EPA assessed residential exposure using the following assumptions: Short-term inhalation exposure for adult residential handlers and short-term postapplication exposure for children from incidental oral contact with treated turf (hand-to-mouth, object-to-mouth and soil ingestion). Although dermal exposure is anticipated from residential use of clopyralid, risks via the dermal route of exposure are not of concern for clopyralid; therefore, dermal risks were not quantitatively assessed for residential exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased prenatal and/or postnatal qualitative or quantitative susceptibility in the available studies in the toxicology database, including the rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. In the developmental rat study, no developmental effects were seen at doses that caused maternal toxicity. In the rabbit developmental study, hydrocephalus and decreased mean fetal weight were observed at a dose that caused severe maternal toxicity, including mortality. In the 2-generation reproduction study, decreased pup weights and increased relative liver weights were observed at the same level that resulted in parental toxicity (decreased body weights, body weight gains and food consumption and slight focal hyperkeratotic changes in the gastric squamous mucosa).

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

i. The toxicity database for clopyralid is complete. EPA has waived the requirement of a 28-day inhalation toxicity study in rats (OCSPP Guideline 870.3465) based on the low volatility and low acute inhalation toxicity for clopyralid, as well as the selection of conservative and adequately protective points of departure from oral studies for clopyralid. As the 28-day inhalation toxicity study was not required, oral studies were considered for use with route-to-route extrapolation for the short-term adult handler inhalation exposure assessment. For short-term inhalation exposure, the maternal toxicity NOAEL of 75 mg/kg/day from the rat developmental toxicity study was selected based on mortality, decreased maternal body weight gain, and decreased food consumption at the LOAEL of 250 mg/kg/day. This study was chosen because it was of the appropriate duration and route, and it provided the most sensitive NOAEL. This endpoint is protective of potential pre- and postnatal toxicity because developmental toxicity in the rabbit was only seen in the presence of significant maternal toxicity (maternal/developmental NOAEL = 250 mg/kg/day), and developmental toxicity in the rat was not observed up to a maternally toxic dose. As such, it is considered to be a conservative endpoint for this exposure scenario.

ii. In the rabbit developmental toxicity study, neuropathology (hydrocephalus) was observed at the highest dose tested. However, the concern for this effect is considered low because it occurred at a dose that caused severe maternal toxicity, including a

high rate of mortality and decreased body weight gain and food consumption. Further, there was no evidence of neurotoxicity in the rat developmental or reproduction studies or in the available subchronic or chronic studies; therefore, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that clopyralid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

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

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, clopyralid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clopyralid from food and water will utilize 25% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of clopyralid is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clopyralid is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to clopyralid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 5,300 for the general population and 1,700 for children 1–2 years old. Because EPA's level of concern for clopyralid is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, clopyralid is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for clopyralid.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, clopyralid is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

The following adequate enforcement methodology is available in *The Pesticide Analytical Manual Vol. II* to enforce the tolerance expression for plant commodities: a gas chromatography/electron-capture detection (GC/ECD) method.

B. International Residue Limits

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

The Codex has not established a MRL for clopyralid in or on the commodities associated with these petitions.

C. Revisions to Petitioned-for Tolerances

Based on the data supporting the petitions, EPA has determined that the proposed tolerance on rapeseed subgroup 20A, except gold of pleasure, forage at 3.0 ppm is not necessary because the commodity is not a significant livestock feed item. Additionally, the Agency has determined that the established tolerances in or on crambe, seed; flax, seed; mustard, seed; and rapeseed, seed should be removed because they are superseded by inclusion in rapeseed, subgroup 20A, except gold of pleasure at 3.0 ppm. EPA is also removing the established tolerance on mustard greens, as it is superseded by inclusion in brassica, leafy greens, subgroup 5B. Finally, the Agency determined that the proposed tolerance on rapeseed subgroup 20A, except gold of pleasure, meal at 6.0 ppm should be established on rapeseed, meal at 6.0 ppm. The EPA may establish an individual tolerance on a processed commodity that is a member of rapeseed subgroup 20A. However, the Agency will not establish a subgroup tolerance for processed foods prepared from crops covered by a group tolerance, as outlined in 40 CFR 180.40, paragraph (f). Therefore, a separate tolerance for the processed commodity is appropriate.

V. Conclusion

Therefore, tolerances are established for residues of clopyralid, (3,6-dichloro-

2-pyridinecarboxylic acid), in or on apple at 0.05 ppm; brassica, leafy greens, subgroup 5B at 5.0 ppm; rapeseed, subgroup 20A, except gold of pleasure at 3.0 ppm; rapeseed, meal at 6.0 ppm; teff, forage at 9.0 ppm; teff, grain at 3.0 ppm; teff, hay at 9.0 ppm; and teff, straw at 9.0 ppm. This regulation additionally removes established tolerances in or on crambe, seed; flax, seed; mustard greens; mustard, seed; and rapeseed, seed.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 10, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.431, paragraph (a) is amended by removing the commodities ''Crambe, seed''; ''Flax, seed''; ''Mustard greens''; ''Mustard, seed''; and ''Rapeseed, seed'' from the table and by adding, alphabetically, the following commodities to the table to read as follows:

§ 180.431 [Amended]

(a) * * *

Commodity	Parts per million
Apple	0.05
* * * *	*
Brassica, leafy greens, subgroup 5B	5.0
* * * *	*
Rapeseed, meal	6.0
Rapeseed, subgroup 20A, except gold of pleasure	3.0
* * * *	*
Teff, forage	9.0
Teff, grain	3.0
Teff, hay	9.0
Teff, straw	9.0
* * * *	*

* * * * *

[FR Doc. 2012–22754 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Sport Fishing Regulations

CFR Correction

§ 32.29 [Corrected]

■ In Title 50 of the Code of Federal Regulations, parts 18 to 199, revised as of October 1, 2011, on page 320, in § 32.29, under Savannah National Wildlife Refuge, the second paragraph A.1. is removed.

[FR Doc. 2012–23169 Filed 9–18–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Sport Fishing Regulations

CFR Correction

§ 32.37 [Corrected]

■ In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2011, on page 345, in § 32.37, under Black Bayou Lake National Wildlife Refuge, the second paragraph B.1. and the second paragraph C.1. are removed.

[FR Doc. 2012–23170 Filed 9–18–12; 8:45 a.m.]

BILLING CODE 1505–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Sport Fishing Regulations

CFR Correction

■ In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2011, on page 410, in § 32.44, the entry for Middle Mississippi River National Wildlife Refuge is reinstated to read as follows:

§ 32.44 Missouri.

* * * * *

Middle Mississippi River National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

* * * * *

[FR Doc. 2012–23171 Filed 9–18–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120201086–2418–02]

RIN 0648–XC236

Fisheries of the Northeastern United States; Bluefish Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2012 bluefish commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the bluefish fishery may not land bluefish in Massachusetts for the remainder of calendar year 2012, unless additional quota becomes available through a transfer from another state. Regulations governing the bluefish fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing bluefish in Massachusetts.

DATES: Effective at 0001 hr local time, September 19, 2012, through 2400 hr local time December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162.

The initial total commercial quota for bluefish for the 2012 fishing year is 10,317,362 lb (4,679,878 kg) (77 FR 25100, April 27, 2012). The percent allocated to vessels landing bluefish in Massachusetts is 6.7167 percent, resulting in a commercial quota of 692,986 lb (314,333 kg) after deduction of research set-aside.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial quotas and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing bluefish in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2012.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land bluefish in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 19, 2012, landings of bluefish in Massachusetts by vessels holding Federal commercial bluefish permits are prohibited for the remainder of the 2012 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 19, 2012, federally permitted dealers are also notified that they may not purchase bluefish from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 14, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–23142 Filed 9–14–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 182
Wednesday, September 19, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1007; Directorate Identifier 2012–CE–031–AD]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for GA 8 Airvan (Pty) Ltd Models GA8 and GA8–TC320 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as burnt electrical connectors leading to the left-hand wingtip pitot heater, which may result in loss of air speed indication. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 5, 2012.

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

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

For service information identified in this proposed AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1007; Directorate Identifier 2012–CE–031–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, has issued AD/GA8/6, dated August 6, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> CASA has received a number of Service Difficulty Reports regarding the pitot probe heater connector. The loss of pitot heat in Instrument Meteorological Condition (IMC) may lead to the loss of airspeed indication. This may lead to the loss of control of the aeroplane. Remedial action is to replace the connector with a terminal block.

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

Relevant Service Information

GippsAero has issued Mandatory Service Bulletin SB–GA8–2012–77, Issue 3, dated March 23, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 29 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 proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $12,760, or $440 per product.

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby

reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

GA 8 Airvan (Pty) Ltd: Docket No. FAA–2012–1007; Directorate Identifier 2012–CE–031–AD.

(a) Comments Due Date

We must receive comments by November 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GA 8 Airvan (Pty) Ltd Models GA8 and GA8–TC320 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by burnt electrical connectors leading to the left-hand wingtip pitot heater, which may result in loss of air speed indication. We are issuing this proposed AD to modify the pitot heat wiring on the left-hand wingtip with a terminal block to prevent loss of heating to the pitot system, which could result in loss of air speed indication.

(f) Actions and Compliance

Unless already done, within the next 100 hours time-in-service or at the next annual inspection, whichever occurs later, modify the pitot heat wiring connector at the left wingtip, following GippsAero Mandatory Service Bulletin SB–GA8–2012–77, Issue 3, dated March 23, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@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 Safety Authority AD/GA8/6, dated August 6, 2012; and GippsAero Mandatory Service Bulletin SB–GA8–2012–77, Issue 3, dated March 23, 2012, for related information. For service information related to this AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 12, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–23051 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY–253–FOR; Docket ID: OSM–2009–0014]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Removal of Required Amendments; public comment period and opportunity for public hearing.

SUMMARY: We are announcing our intent to remove two required amendments to the Kentucky regulatory program (hereinafter, the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As a result of OSM's review of the Kentucky program concerning its regulations and procedures relating to Ownership and Control, and Transfer, Assignment or Sale of Permit Rights, OSM has determined that two previously required amendments can be removed. Kentucky's program with regard to Ownership and Control, and Transfer, Assignment, or Sale of Permit Rights, is now consistent with the corresponding Federal regulations and SMCRA.

This document gives the times and locations that the Kentucky program is available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., local time October 19, 2012. If requested, we will hold a public hearing on October 15, 2012. We will accept requests to speak until 4:00 p.m., local time on October 4, 2012.

ADDRESSES: You may submit comments, identified by ''KY–253–FOR; Docket Number OSM–2009–0014'' by either of the following two methods:

Federal eRulemaking Portal: www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2009–0014. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier: Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section in this document.

Docket: In addition to obtaining copies of documents at *www.regulations.gov,* you may also obtain information at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Joseph L. Blackburn, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–3902; Email: *jblackburn@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph L. Blackburn, Telephone: (859) 260–3900. Email: *jblackburn@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Background on the Ownership and Control Rule
III. Description of OSM's Proposed Action
IV. Public Comment Procedures
V. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Background on the Ownership and Control Rule

OSM first promulgated final rules to address Ownership and Control (O&C) over 20 years ago. Since then, OSM has published a series of changes to O&C and related rules, some in response to Federal Court decisions, culminating in our latest rulemaking published on December 3, 2007, which included changes to our Transfer, Assignment, or Sale (TAS) of Permit rights rules (72 FR 68000).

The Lexington Field Office conducted an evaluation of the Kentucky regulatory program pursuant to 30 CFR 732.17 in order to determine if any changes were required. The Lexington Field Office reviewed the Kentucky program against all revisions to the Federal regulations through July 1, 2008, using a standard of ''no less effective than the Federal regulations in meeting the requirements of the Act'' (65 FR 79658). As a part of the evaluation, the Lexington Field Office of OSM conducted several meetings with the Kentucky Department for Natural Resources (KDNR). As a part of its review, OSM considered whether the program is currently being implemented in accordance with the current Federal regulations. Because OSM had issued required amendments to KDNR prior to the current final rulemaking, OSM revisited the need for those required amendments in light of the current status of the Federal regulations. As a result of that review, OSM is proposing to remove the previously required amendments as discussed below.

III. Description of OSM's Proposed Action

OSM is proposing removal of a required amendment found at 30 CFR 917.16 (e) regarding the Kentucky ownership and control regulations. Previously, OSM reviewed a program amendment submitted by Kentucky, which among other things, proposed to add a regulation which prohibited ''* * * the issuance of a permit if the applicant, operator or anyone who owns or controls the applicant, controls or has controlled any surface coal mining and reclamation operation with a demonstrated pattern of willful violations of Kentucky Revised Statute (KRS) chapter 350 and regulations adopted pursuant thereto * * *'' In a **Federal Register** notice dated September 23, 1991 (56 FR 47907), OSM found the proposed 405 KAR 8:010 Section 13 (4)(c) to be less effective than its Federal counterpart at 30 CFR 773.15 (b)(3) to the extent the proposal does not include violations of Federal regulatory programs and other State regulatory programs. OSM disapproved the proposed revisions and required Kentucky to further amend its program to correct the deficiencies identified. OSM included a required program amendment in its decision as follows:

> 30 CFR 917.16(e) By March 23, 1992, Kentucky shall amend its rules at 405 KAR 8:010 section 13(4)(c) to include violations of Federal regulatory programs and other State regulatory programs, not just violations of KRS chapter 350 and regulations adopted thereto.

As a result of the recent review of the current O&C program in Kentucky, we have determined that KDNR interprets 405 KAR 8:010 Section 13 (4) in a manner that is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. In our previous assessment, leading to the

required amendment, OSM considered only one regulation, which on its face implied that KDNR might not consider all violations. However, our recent review determined that KDNR has been interpreting these standards consistent with the Federal regulations. When reviewing the Kentucky program in total, we tentatively determined that the program is being interpreted such that no permit will be issued to an applicant who owns or controls operations with a demonstrated pattern of willful violations of the Kentucky program, SMCRA, or any other surface coal mining regulatory program, that are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Kentucky program, SMCRA, or with any other surface coal mining regulatory program. For this reason, we are proposing the removal of the required amendment at 30 CFR 916.16(e).

In addition, OSM is proposing removal of a required amendment found at 30 CFR 917.16 (h) regarding the Kentucky operator change revision regulations. Previously OSM reviewed a program amendment submitted by Kentucky, which among other things, proposed to add a regulation which ''* * * established a new category of permit revision for operator changes that do not constitute a transfer, assignment or sale of permit rights.''

In a **Federal Register** dated January 12, 1993 (58 FR 3833), OSM determined that the proposed change to 405 KAR 8:010 Section 20(6)(h) did not include notification to OSM, nor did the proposed rule require that the regulatory authority be notified when the approved change was consummated. OSM disapproved the proposed revision and required Kentucky to further amend its program to correct the deficiencies identified. OSM included a required program amendment in its decision as follows:

> 30 CFR 917.16(h) By June 14, 1993, Kentucky shall amend its rules at 405 KAR 8:010 Section 20(6)(h) by including OSM as one of the parties to be notified of the cabinet's decision to approve or deny the application for an operator change and to require that the regulatory authority be notified when the approved change is consummated.

OSM has historically interpreted the Federal rules as meaning that changes in the ''operator'' of a mine, as that term is defined at 30 CFR 701.5, must be processed as a TAS of permit regulations. In the December 3, 2007, Federal regulation (72 FR 68000) OSM made changes to TAS, including defining TAS as limited to ''* * * a change of a permittee * * *'' (30 CFR 701.5). Therefore, the Federal regulations no longer consider a change in the ''operator'' of a mine to fall under the definition of TAS. Kentucky continues to process a change in mine operator in a manner similar to the process developed for the TAS applications. In addition, KDNR will continue entering all data concerning a revision of the mine operator in both Applicant/Violator System (AVS) and Kentucky Surface Mining Information System (KYSMIS).

IV. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the Kentucky program now satisfies the applicable program approval criteria of 30 CFR 732.15. If we remove the required amendments, the Kentucky program will be approved as it is currently being implemented.

Written or Electronic Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time on October 4, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, that if possible, each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

V. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the

rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 9, 2012.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2012–23063 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SATS No. MS–023–FOR; Docket No. OSM–2012–0018]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Mississippi regulatory program (Mississippi Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes revisions to its regulations regarding: definitions; identification of interests; lands eligible for remining; permit eligibility determination; review of permit applications; eligibility for provisionally issued permits; criteria for permit approval or denial; initial review and finding requirements for improvidently issued permits; notice requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; unanticipated events or conditions at remining sites; verification of ownership or control application information; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance requirements for permittees; backfilling and grading: previously mined areas; and alternative enforcement. Mississippi intends to revise its program to be no less effective than the Federal regulations and to improve operational efficiency.

This document gives the times and locations of the Mississippi program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., October 19, 2012. If requested, we will hold a public hearing on the amendment on October 15, 2012. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on October 4, 2012.

ADDRESSES: You may submit comments, identified by SATS No. MS–023–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209; Telephone: (205) 290–7282
- *Fax:* (205) 290–7280
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Mississippi program, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address of our Birmingham Field Office listed above during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office or going to *www.regulations.gov.*

Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282, Email: *swilson@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Mississippi Office of Geology, Department of Environmental Quality, 700 N. State Street, Jackson, Mississippi 39202, Telephone: (601) 961–5519.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290–7282. Email: *swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Mississippi Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Mississippi program effective September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Mississippi program in the September 4, 1980, **Federal Register** (45 FR 58520). You can also find later actions concerning the Mississippi program and program amendments at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Description of the Proposed Mississippi Amendment

By email dated July 26, 2012 (Administrative Record No. MS–0423), Mississippi sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 *et seq.*). Mississippi submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. MS–0420–02) that OSM sent to Mississippi in accordance with 30 CFR 732.17(c), with an additional change submitted on its own initiative. Below is a summary of the changes proposed by Mississippi. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

Mississippi proposes to revise its Surface Coal Mining Regulations in the following sections:

A. Mississippi Surface Coal Mining Regulations § 105. Definitions

Mississippi proposes to modify this section by changing language, adding new language, or deleting language for

the definitions of Applicant Violator System or AVS; Knowing or Knowingly; Knowingly; Ownership or Control Link; Previously mined area; Slope; Violation; and Willfully.

B. Mississippi Surface Coal Mining Regulations § 2305. Identification of Interests

Mississippi proposes to add additional language requiring the identification of interests for the applicant and operator, and the entry of the applicants information into the Applicant/Violator System (AVS).

C. Mississippi Surface Coal Mining Regulations § 2902. Lands Eligible for Remining

Mississippi proposes to add a new section regarding lands eligible for remining.

D. Mississippi Surface Coal Mining Regulations § 3102. Permit Eligibility Determination

Mississippi proposes to add a new section regarding permit eligibility determination.

E. Mississippi Surface Coal Mining Regulations § 3112. Review of Permit Applications

Mississippi proposes to renumber section § 3113 as § 3112.

F. Mississippi Surface Coal Mining Regulations § 3113. Eligibility for Provisionally Issued Permits

Mississippi proposes to add this new section regarding an applicant's eligibility for a provisionally issued permit.

G. Mississippi Surface Coal Mining Regulations § 3115. Criteria for Permit Approval or Denial

Mississippi proposes to add new language regarding permit approval for remining operations.

H. Mississippi Surface Coal Mining Regulations § 3127. Initial Review and Finding Requirements for Improvidently Issued Permits

Mississippi proposes to delete old language regarding general procedures for improvidently issued permits and insert new language regarding initial review and finding requirements for improvidently issued permits.

I. Mississippi Surface Coal Mining Regulations § 3128. Notice Requirements for Improvidently Issued Permits

Mississippi has proposed to add a new section regarding the notice requirements for improvidently issued permits.

J. Mississippi Surface Coal Mining Regulations § 3129. Suspension or Rescission Requirements for Improvidently Issued Permits

Mississippi proposes to change the language of this section regarding suspension and rescission requirements for improvidently issued permits.

K. Mississippi Surface Coal Mining Regulations § 3130. Unanticipated Events or Conditions at Remining Sites

Mississippi proposes to add this new section regarding unanticipated events or conditions at remining sites.

L. Mississippi Surface Coal Mining Regulations § 3131. Verification of Ownership or Control Application Information

Mississippi proposes to change language in this section regarding the determination of additional owners or controllers and their identification information for entry into AVS if the applicant or operators do not have previous mining experience.

M. Mississippi Surface Coal Mining Regulations § 3133. Who May Challenge Ownership or Control Listings and Findings

Mississippi proposes to delete language in this section regarding the review of ownership or control and violation information, and add language regarding who may challenge an ownership or control listing or finding.

N. Mississippi Surface Coal Mining Regulations § 3135. How to Challenge an Ownership or Control Listing or Finding

Mississippi proposes to delete language in this section regarding procedures for challenging ownership or control links in AVS and add language regarding how to challenge ownership or control listings or findings.

O. Mississippi Surface Coal Mining Regulations § 3136. Burden of Proof for Ownership or Control Challenges

Mississippi proposes to delete language from this section regarding written agency decisions on challenges to ownership or control listings or findings and add new language regarding the burden of proof for ownership or control challenges.

P. Mississippi Surface Coal Mining Regulations § 3137. Written Agency Decision on Challenges to Ownership or Control Listings or Findings

Mississippi proposes to delete language from this section regarding standards for challenging ownership or control links and the status of violations, and add new language regarding written agency decisions on challenges to ownership or control listings or findings.

Q. Mississippi Surface Coal Mining Regulations § 3138. Post-Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

Mississippi proposes to add this new section regarding post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

R. Mississippi Surface Coal Mining Regulations § 3139. Post-Permit Issuance Requirements for Permittees

Mississippi proposes to add this new section regarding post-permit issuance requirements for permittees.

S. Mississippi Surface Coal Mining Regulations § 5396. Backfilling and Grading: Previously Mined Areas

Mississippi proposes to add this new section regarding backfilling and grading requirements on previously mined areas.

T. Mississippi Surface Coal Mining Regulations Chapter 73. Alternative Enforcement

Mississippi proposes to add this new chapter regarding alternative enforcement by adding new sections § 7301 Scope, § 7303 General Provisions, § 7305 Criminal Penalties, and § 7307 Civil Actions for Relief.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether Mississippi's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Mississippi's State Program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on October 4, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 31, 2012.

Paul J. Ehret,

Acting Regional Director, Mid-Continent Region.

[FR Doc. 2012–23077 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0435; FRL–9731–1]

Approval and Promulgation of Implementation Plans; Texas; Beaumont/Port Arthur Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Texas' request to revise its Beaumont/Port Arthur (BPA) 1997 8-hour ozone maintenance air quality State Implementation Plan (SIP) by replacing the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) 2010a emissions model. The BPA 1997 8-hour ozone maintenance area consists of Hardin, Jefferson, and Orange Counties in Texas. Texas submitted this request to EPA for parallel processing on June 28, 2012.

DATES: Comments must be received on or before October 19, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0435, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6comment.htm.* Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2012–0435. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public

docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202.

The State submittal is also available for public inspection during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–8542; fax number 214–665–6762; email address *riley.jeffrey@epa.gov.*

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

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I. What action is EPA proposing?

EPA is proposing to approve new MOVES2010a-based budgets for the Beaumont/Port Arthur (BPA) 1997 8-hour ozone maintenance area. The BPA area was redesignated to attainment of the 1997 8-hour ozone standard on October 20, 2010 (75 FR 64675, effective date November 19, 2010), and the MOBILE6.2-based budgets were approved in that notice. Should EPA finalize this proposed approval, the newly submitted MOVES2010a budgets will replace the existing, MOBILE6.2-based budgets in the state's 1997 8-hour ozone maintenance plan and must then be used in future transportation conformity analyses for the area. At that time, the previously approved budgets would no longer be applicable for transportation conformity purposes.

Should EPA approve the MOVES2010a-based budgets, the BPA 1997 8-hour ozone maintenance area must use the MOVES2010a-based budgets starting on the effective date of that final approval. See 75 FR 9411–9414 for background and section II.C below for details.

II. What is the background for this rulemaking?

A. SIP Budgets and Transportation Conformity

Under the Clean Air Act (CAA), states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given National Ambient Air Quality Standard (NAAQS). These emission control strategy SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. SIP budgets are the portions of the total allowable emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must ''conform'' to (*i.e.,* be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The transportation conformity regulations can be found at 40 CFR Part 93.

Before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same purpose, as is the case with Texas' MOVES2010a 1997 8-hour ozone maintenance plan budgets, EPA must approve the budgets, and can affirm that they are adequate at the same time. Once EPA approves the submitted budgets, they must be used by state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

B. Prior Approval of Budgets

EPA had previously approved budgets for the Beaumont/Port Arthur 8-hour ozone maintenance area for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the year 2021 on October 20, 2010 (75 FR 64675). These budgets were based on EPA's MOBILE6.2 emissions model. The ozone maintenance plan established 2021 budgets for the Beaumont/Port Arthur area of 4.77 tons per summer day (tpd) for VOCs and 7.24 tpd for NO_X. The budgets demonstrated a net reduction in emissions from the monitored attainment year and the NO_X budget included a margin of safety.

C. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). This notice approved the use of MOVES2010 in official SIP submissions to EPA and for regional emissions analyses for transportation conformity purposes outside of California. In addition, the notice started a two-year grace period before MOVES2010 is required to be used in new regional emissions analyses for transportation conformity determinations outside of California. EPA has since extended that grace period until March 2, 2013 (77 FR 11394).

On September 8, 2010, EPA released MOVES2010a, which included minor revisions that enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010. Therefore, MOVES2010a is not considered a ''new model'' under 40 CFR 93.111. As a result, the MOVES2010 grace period for regional conformity analyses applies to the use of MOVES2010a as well.[1]

EPA encouraged Metropolitan Planning Organizations (MPOs), Departments of Transportation, and state air agencies to examine how MOVES would affect future transportation plans and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES2010 or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA also encouraged state and local air agencies to consider how the release of MOVES would affect analyses supporting SIP submissions under development.

The Texas Transportation Institute (TTI) (under contract with the Texas Commission on Environmental Quality (TCEQ)) has used MOVES2010a emission rates with the transportation network information to estimate emissions in the years of the transportation plan and also for the SIP. Texas is revising the budgets at this time using the latest planning assumptions including population and employment updates. In addition, newer vehicle registration data has been used to update the age distribution of the vehicle fleet. Texas finds that updating the budgets with MOVES2010a will prepare the South East Texas Regional Planning Commission (SETRPC, the Beaumont/Port Arthur area MPO) for the transition to using MOVES for conformity analyses and determinations. The interagency consultation group has had extensive consultation on the requirements and need for new budgets.

D. Submission of New Budgets Based on MOVES2010a

On June 28, 2012, Texas submitted for parallel processing replacement budgets based on MOVES2010a for the Beaumont/Port Arthur area. Texas is currently providing public review and comment at the state level. The state public comment period ended on August 3, 2012. EPA is proposing to approve the MOVES2010a budgets after completion of the public process and formal submittal of the SIP revision request.

The MOVES2010a budgets are proposed to replace the prior approved MOBILE6.2 budgets and are for the same year and pollutants/precursors. The new MOVES2010a budgets are for the year 2021 for both VOCs and NO_X. Texas has also submitted MOVES2010a emissions for the attainment year of 2005 (and interim inventory years 2011, 2014 and 2017) as a comparison to the 2021 budget year. Table 4–1 in the submittal demonstrates how mobile source emissions decline from the attainment year of 2005. In 2005, the estimated NO_X emissions from mobile sources is 45.60 tpd and the estimated VOC emissions from mobile sources is 11.63 tpd. The 2021 estimated emissions for NO_X from mobile sources is 6.24 tpd and the VOC estimated emissions from mobile sources is 4.77 tpd.

Tables 4–2 and 4–3 in the submittal demonstrate trends in total estimated NO_X and VOC emissions, respectively, between 2005 to 2021. In 2005, the total estimated NO_X emissions from all sources (including mobile, point, area and non-road sources) is 148.04 tpd and the total VOC emissions, for the 2005 attainment year, from all sources is 210.51 tpd. The 2021 estimated emissions for total NO_X from all sources is 137.24 tpd and the total VOC emissions from all sources is 222.69 tpd. Although there is a 5.8% increase in total VOC emissions from all sources between the 2005 attainment year and the 2021 budget year, there is an offsetting 7.3% decrease in total NO_X emissions from all sources between these years. Therefore, the mobile source emissions, when included with point, area and non-road sources continue to demonstrate maintenance of the 1997 8-hour ozone standard attainment level of emissions in the Beaumont/Port Arthur area.

No additional control measures were needed to maintain the 1997 ozone standard emissions in the Beaumont/Port Arthur area. The on-road MOVES2010a based budgets are in Table 4–7 of the submittal and are listed as 9.7 tpd for NO_X and 3.9 tpd for VOCs in the year 2021. These budgets will continue to keep emissions in the Beaumont/Port Arthur area below the calculated attainment year of emissions.

III. What are the criteria for approval?

The CAA has always required that revisions to existing SIPs and budgets continue to meet applicable requirements (i.e., reasonable further progress (RFP), attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets.

The transportation conformity rule (at 40 CFR 93.118(e)(4)(iv)) requires that ''the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress (RFP), attainment, or maintenance (whichever is relevant to the given implementation plan submission).'' This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate or approve them for conformity purposes.

In addition, EPA has stated that areas can revise their budgets and inventories using MOVES without revising their entire SIP if (1) the SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the

[1] For more information, see 77 FR 11394.

baseline/attainment year and maintenance year are the same or greater using MOVES than they were previously. The Texas submittal meets this requirement as described below in section IV.

For more information, see EPA's latest ''Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models.*

IV. What is EPA's analysis of the State's submittal?

A. The Revised Inventories

The Texas SIP revision request for Beaumont/Port Arthur 1997 8-hour ozone maintenance plan seeks to revise only the on-road mobile source inventories and not the non-road inventories, area source inventories or point source inventories for the 2021 year for which the SIP revises the budgets. TCEQ has certified that the control strategies remain the same as in the original SIP, and that no other control strategies are necessary. This is confirmed by the complete, quality-assured 2009–2011 ozone season monitoring data for Beaumont/Port Arthur, which shows continued attainment for the 1997 8-hour ozone standard. Thus, the current control strategies are continuing to keep the area in attainment of the 1997 8-hour ozone NAAQS.

EPA has reviewed the emission estimates for point, area and non-road sources and concluded that no major changes to the projections need to be made. The submittal states that analysis of emissions in these source categories using more recent growth and control strategy assumptions than the original 2008 submittal resulted in lower emissions estimates of NO_X and VOCs for each inventory year. Because of this, EPA concludes that the growth and control strategy assumptions for non-mobile sources for the years 2005, 2011, 2014, 2017 and 2021 continue to be valid and do not affect the overall conclusions of the original plan.

Texas confirms that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions from mobile sources) are 148.04 tpd for NO_X and 210.51 tpd for VOCs in the 2005 attainment year. The total emissions from all sources in the 2021 year are 137.24 tpd for NO_X and 222.69 tpd for VOCs. Although there is a 5.8% increase in total VOC emissions from all sources between the 2005 attainment year and the 2021 budget year, there is an offsetting 7.3% decrease in total NO_X emissions from all sources between these years. These totals demonstrate that emissions in the Beaumont/Port Arthur area are continuing to decline and remain below the 1997 8-hour ozone standard attainment levels.

Texas has submitted MOVES2010a-based budgets for the Beaumont/Port Arthur area that are clearly identified in Table 4–7 of the submittal. The budgets for 2021 are 9.7 tpd for NO_X and 3.9 tpd for VOCs.

TABLE 1—BEAMONT/PORT ARTHUR MOVES2010A-BASED MVEBS (TPD)

Budget year	NO_X MVEB	VOC MVEB
2021	9.7	3.9

B. Approvability of the MOVES2010a-Based Budgets

EPA is proposing to approve the MOVES2010a-based budgets submitted by the state for use in determining transportation conformity in the Beaumont/Port Arthur 1997 ozone maintenance area. EPA is making this proposal based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our in-depth evaluation of the State's submittal and SIP requirements. EPA has determined, based on its evaluation, that the area's maintenance plan would continue to serve its intended purpose with the submitted MOVES2010a-based budgets and that the budgets themselves will meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4) after the state public hearing is completed and the SIP is formally submitted.

EPA is parallel processing this SIP revision request which means that EPA is proposing approval at the same time that the state is completing the public process at the state level. This SIP revision request will not be complete and will not meet all the adequacy criteria until the state public process is complete and the SIP revision is submitted in final with a letter from the Governor or Governor's designee. EPA is proposing to approve the SIP revision request after completion of the state public process and final submittal. If any comments are received, EPA will consider those comments received both at the state and Federal level.

EPA is moving forward with proposing approval with this parallel process because transportation projects cannot be amended to the Beaumont/Port Arthur Transportation Plan and transportation improvement program until this budget replacement is completed. The budgets need to be updated, not only to accommodate the use of MOVES2010a, but also because of the updated planning assumptions for mobile sources.

The adequacy criteria found in 40 CFR 93.118(e)(4) are as follows:

- The submitted SIP was endorsed by [the Governor/Governor's designee] and was subject to a state public hearing (§ 93.118(e)(4)(i));
- The submitted SIP underwent consultation among Federal, state, and local agencies and the state fully documented the submittal (§ 93.118(e)(4)(ii));
- The budgets are clearly identified and precisely quantified (§ 93.118(e)(4)(iii));
- The budgets, when considered with other emission sources, are consistent with applicable requirements for [reasonable further progress/attainment/maintenance] (§ 93.118(e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the SIP (§ 93.118(e)(4)(v)); and
- The revisions explain and document changes to the previous budgets, impacts on point and area source emissions and changes to established safety margins (§ 93.118(e)(4)(vi)).

Our review finds that Texas has met all of the adequacy criteria, except the public process and final submittal by the Governor or Governor's designee. The interagency consultation group, which is composed of the state air agency, state Department of Transportation, Federal Highway Administration, EPA, and SETRPC have discussed and reviewed the budgets developed with MOVES2010a. The budgets are clearly identified and precisely quantified in the submittal in table 4–7. The budgets when considered with other emissions sources (point, area, non-road) are consistent with continued maintenance of the 1997 ozone standard. The budgets are clearly related to the emissions inventory and control measures in the SIP. The changes from the previous budgets are clearly explained with the change in the model from MOBILE6.2 to MOVES2010a and the revised and updated planning assumptions. The inputs to the model are detailed in the Appendix to the submittal. EPA has reviewed the inputs to the

MOVES2010a modeling and participated in the consultation process. The Federal Highway Administration-Texas Division and the Texas Department of Transportation have taken a lead role in working with the MPO and contractor to provide accurate, timely information and inputs to the MOVES2010a model runs. The SETRPC network model provided the vehicle miles of travel and other necessary data from the travel demand networks.

The CAA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (in this case, maintenance). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Texas' submitted MOVES2010a budgets meet EPA's two criteria for revising budgets without revising the entire SIP:

(1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES2010a base year and milestone, attainment, or maintenance year inventories, and

(2) The state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

EPA has reviewed the emission estimates for point, area and non-road sources and concluded that no major changes to the projections need to be made. The submittal states that analysis of emissions in these source categories using more recent growth and control strategy assumptions than the original 2008 submittal resulted in lower emissions estimates of NO_X and VOCs for each inventory year. Because of this, EPA concludes that the growth and control strategy assumptions for non-mobile sources for the years 2005, 2011, 2014, 2017 and 2021 continue to be valid and do not affect the overall conclusions of the original plan.

Texas confirms that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions for mobile sources) decrease from 148.04 tpd for NO_X and 210.51 tpd for VOCs in the 2005 attainment year to 137.24 tpy NO_X and 222.69 tpd VOC in 2021. Although there is a 5.8% increase in total VOC emissions from all sources between the 2005 attainment year and the 2021 budget year, there is an offsetting 7.3% decrease in total NO_X emissions from all sources between these years. These totals demonstrate that emissions in the Beaumont/Port Arthur area are continuing to decline and remain below the 1997 8-hour ozone standard attainment levels. Table 2 shows total emissions in the Beaumont/Port Arthur area including point, area, non-road, and mobile sources, and demonstrates the declining emissions from the 2005 attainment year.

TABLE 2—TOTAL EMISSIONS WITH MOVES2010A MOBILE EMISSIONS

	2005	2011	2014	2017	2021
VOC (tpd)	210.51	216.60	217.20	219.14	222.69
NO_X (tpd)	148.04	142.80	138.02	136.27	137.24

Based on our review of the SIP and the new budgets provided, EPA has determined that the SIP will continue to meet its requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a inventories.

C. Applicability of MOBILE6.2-Based Budgets

Pursuant to the State's request, EPA is proposing that, if we finalize the approval of the revised budgets, the state's existing MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes upon the effective date of that final approval.

In addition, once EPA approves the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOVES2010 (and subsequent minor revisions) for the pollutants included in these budgets will end for the Beaumont/Port Arthur ozone maintenance area on the effective date of that final approval.[2]

V. Proposed Action

EPA is proposing in this action that the Beaumont/Port Arthur existing approved budgets for VOCs and NO_X for 2021 for the 1997 8-hour ozone maintenance plan be replaced with new budgets based on the MOVES2010a emissions model. Once this proposal is finalized, future transportation conformity determinations would use the new, MOVES2010a-based budgets and would no longer use the existing MOBILE6.2-based budgets. EPA is also proposing to find that the Beaumont/Port Arthur area's maintenance plan would continue to meet its requirements as set forth under the CAA when these new budgets are included.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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);

[2] For more information, see Question 11 of EPA's ''Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' and 75 FR 9411.

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: September 11, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–23123 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0100; FRL–9728–8]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) for the Houston/Galveston/Brazoria (HGB) 1997 8-Hour ozone nonattainment Area (Area). The HGB Area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. Specifically, we are proposing to approve portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) as meeting certain Reasonably Available Control Technology (RACT) requirements for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) in the HGB Area. We are also proposing to approve the 2007 Voluntary Mobile Emission Reduction Program (VMEP) commitments for the HGB Area. This action is in accordance with section 110 of the federal Clean Air Act (the Act, CAA).

DATES: Comments must be received on or before October 19, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0100, by one of the following methods:

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

• *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

• *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

• *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:00 a.m. and 4:00 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2012–0100. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected from disclosure. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: TCEQ, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone

(214) 665–6691, fax (214) 665–7263, email address *shar.alan@epa.gov.*

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

Outline

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L. Is Texas' approach to for RACT determination for major NO_X sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

A. What actions are we proposing?

We are proposing to approve portions of revisions to the Texas SIP submitted to EPA with two separate letters dated June 13, 2007 and April 6, 2010 from TCEQ. These two separate submittals are described below.

1. The June 13, 2007 Submittal

The June 13, 2007 submittal, sent to EPA from TCEQ, included the following components. (1) Control of Air Pollution from Motor Vehicles, (2) Control of Air Pollution from Volatile Organic Compounds, and (3) Voluntary Mobile Emission Reduction Program (VMEP) commitments. Each component is discussed below. The first component concerns revisions to 30 TAC Chapter 114 Control of Air Pollution from Motor Vehicles, sections 114.6 and 114.319 which addressed the Texas Low Emission Diesel standards for marine fuels. We approved this component of the June 13, 2007 submittal on October 24, 2008, at 73 FR 63378. The revision to these sections has been in effect, federally, since November 24, 2008. The second component of the June 13, 2007 submittal concerns revisions to 30 TAC, Chapter 115 Control of Air Pollution from Volatile Organic Compounds, sections 115.110, 115.112 –115.117, 115.119, 115.541–115.547 and 115.549. We approved these revisions as enhancing the Texas SIP because these rule revisions required additional VOC controls on storage tanks, lowered VOC emissions, and helped lower ozone levels in the HGB Area. See 75 FR 15348 of March 29, 2010. The revisions to these sections have been in effect, federally, since May 28, 2010. We are now proposing to approve the 2007 VMEP for the HGB Area into Texas SIP. For more information on VMEP see section below. In addition, the June 13, 2007 submittal included an analysis intended to demonstrate RACT was being implemented in the HGB Area as required by the CAA (Appendix D of the submittal).

2. What is a VMEP commitment?

Voluntary mobile source strategies complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition. The EPA believes that the Act allows SIP credit for new approaches to reducing mobile source emissions, where supported by enforceable commitments to monitor and assess implementation and backfill any emissions reductions shortfall in a timely fashion. This flexible approach is consistent with the Clean Air Act section 110. Economic incentive provisions are also available in sections 182 and 108 of the Act. Credits generated through VMEP can be counted toward attainment and maintenance of the NAAQS. Due to the innovative nature of this program, only up to 3% of the total future year emissions reductions required to attain an appropriate NAAQS, may be claimed under the VMEP policy guidance.

3. The April 6, 2010 Submittal

In conjunction with the June 13, 2007 submittal, we are also proposing to approve a part of the April 6, 2010 revision to the Texas SIP, submitted with TCEQ's letter of April 6, 2010, for VOC RACT purposes. Specifically, we are proposing to find, based on the analysis in Appendix D of the April 6, 2010 submittal that Texas has met certain RACT requirements under section 182(b). Appendix D of the April 6, 2010 submittal is titled ''Reasonably Available Control Technology Analysis.'' See section B for more information on RACT evaluation for the HGB Area.

B. What is RACT?

The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See 44 FR 53761, September 17, 1979. Section 172(c)(1) of the Act requires that SIPs for nonattainment areas ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the primary National Ambient Air Quality (NAAQS) standards.''

Section 182(b)(2) of the Act requires states to submit a SIP revision and implement RACT for moderate and above ozone nonattainment areas. For a Moderate, Serious, or Severe Area a major stationary source is one which emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs or NO_X, respectively. See CAA sections 182(b), 182(c), and 182(d). The EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of Control Techniques Guidelines (CTG) and Alternative Control Techniques (ACT) documents. See *http://www.epa.gov/ttn/naaqs/ozone/ctg_act/index.htm* (URL dating May 23, 2012) for a listing of EPA-issued CTGs and ACTs for VOC or Oxides of Nitrogen (NO_X).

The HGB Area was designated as Severe for the 1997 8-Hour ozone NAAQS. See 73 FR 56983, October 1, 2008. Thus, per section 182(d) of the CAA, a major stationary source in the HGB Area is one which emits, or has the potential to emit, 25 tpy or more of VOCs or NO_X. The inventory of VOC and NO_X sources listed in Appendix D of the April 6, 2010 submittal is intended to fulfill this requirement.

Under section 183(b), EPA is required to periodically review and, as necessary, update CTGs. EPA issued a number of new CTGs in 2006, 2007, and 2008. Accordingly, Texas revised its Chapter 115 regulations to address these VOC RACT control measures. These most

recent revisions to Chapter 115 regulations corresponding to these newly-EPA-issued CTGs will be addressed in a separate rulemaking action.

II. Evaluation

A. What types of VMEP commitments qualify for SIP credit?

The basic framework for ensuring SIP credit for VMEPs is spelled out in guidance issued under a memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated October 24, 1997, entitled ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs).'' Generally, to obtain credit for a VMEP, a State submits a SIP that: (1) Identifies and describes a VMEP; (2) Contains projections of emission reductions attributable to the program, along with any relevant technical support documentation; (3) Commits to evaluation and reporting on program implementation and results; and (4) Commits to the timely remedy of any credit shortfall should the VMEP not achieve the anticipated emission reductions. More specifically, the guidance suggests the following key points be considered for approval of credits. The credits should be quantifiable, surplus, enforceable, permanent, and adequately supported. In addition, VMEPs must be consistent with attainment of the standard and with the ROP requirements and not interfere with other CAA requirements. The VMEP program for an area can be revised by a SIP revision that substitutes or adds other VMEP measures if needed.

B. What type of programs did Texas submit as VMEP?

The State submitted program descriptions that projected emission reductions attributable to each specific program as part of the HGB attainment demonstration submitted June 13, 2007. Table 1 below lists the identified programs and their projected credits.

TABLE 1—VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED

Program type	NO_X benefits (tons per day)
Public and Private Sector Clean Fuel Fleet	2.0
Commute Solutions	0.77
Pooled Ownership of Vehicles	0.05
Total Benefits (tpd)	2.82

This revision to the VMEP builds on the existing HGB VMEP program approved by EPA on November 14, 2001 which the State previously has committed to evaluate and report on the program implementation and results and to timely remedy any credit shortfall.

C. Do the 2007 VMEPs meet our requirements for approval?

A detailed analysis of all the VMEP measures can be found in our TSD prepared for this document. For each creditable VMEP, the measure was found to be quantifiable. The reductions are surplus because they are not substitutes for mandatory, required emission reductions. The commitment to monitor, assess and timely remedy any shortfall from implementation of the measures is enforceable against the State. The reductions will continue at least for as long as the time period in which they are used by this SIP demonstration, so they are considered permanent. There is a commitment that each measure is adequately supported by personnel and program resources for implementation.

D. What action is EPA taking on the 2007 VMEP?

The HGB Area's ozone SIP VMEP meets the criteria for credit in the SIP. Texas has demonstrated that the credits are quantifiable, surplus, enforceable, permanent, adequately supported, and consistent with the SIP and the Act. Therefore, we are proposing to approve the 2007 VMEP portion of the Texas SIP.

E. What is TCEQ's approach and analysis to RACT in the June 13, 2007 submittal?

Under sections 182(b)(2)(A) and (B) states must insure RACT is in place for each source category for which EPA issued a CTG. As a part of June 13, 2007 submittal TCEQ conducted a RACT analysis to demonstrate that the RACT requirements for CTG sources in the HGB 8-Hour ozone nonattainment Area have been fulfilled. The TCEQ revised and supplemented this analysis in the April 6, 2010 submittal. The TCEQ conducted its analysis by: (1) Identifying all categories of CTG and major non-CTG sources of VOC and NO_X emissions within the HGB Area; (2) Listing the state regulation that implements or exceeds RACT requirements for that CTG or non-CTG category; (3) Detailing the basis for concluding that these regulations fulfill RACT through comparison with established RACT requirements described in the CTG guidance documents and rules developed by other state and local agencies; and (4) Submitting negative declarations when there are no CTG or major Non-CTG sources of VOC emissions within the HGB Area. We have reviewed the submittal and are proposing that TCEQ has properly conducted its analysis, and their approach to control requirements are in agreement with our RACT requirements for affected VOC sources in the HGB Area.

F. What CTG source categories are we addressing in this action?

The EPA entered into a CD with the Sierra Club concerning revisions to the Texas SIP for HGB Area. Under the terms of this CD, February 1, 2013 is the deadline by which EPA has to propose a rulemaking action relevant to RACT for VOC and NO_X source for the HGB Area. Table 2 below contains a list of VOC CTG source categories and their corresponding sections of 30 TAC Chapter 115 that fulfill the applicable RACT requirements, under the terms of the CD.

TABLE 2—CTG SOURCE CATEGORIES AND THEIR CORRESPONDING TEXAS VOC RACT RULES

Source category in HGB area	Fulfilling RACT requirement, 30 TAC chapter 115
Bulk Gasoline Plants	§ 115.211–219.
Natural Gas/Gasoline Processing	§ 115.352–359.
Synthetic Organic Chemical Manufacturing Industry—Polymer & Resin Manufacturing.	§ 115.352–359.
Gasoline Tank Trucks & Vapor Collection Systems	§ 115.211–219 and § 115.234–239.
Refineries—Leaks from Equipment	§ 115.352–359.
Synthetic Organic Chemical Manufacturing Industry—High Density Resins	§ 115.120–129.
Synthetic Organic Chemical Manufacturing Industry—Synthesized Pharmaceutical Products.	§ 115.531—539.
Petroleum Liquid Storage—External Floating Roof Tanks	§ 115.112–119.

TABLE 2—CTG SOURCE CATEGORIES AND THEIR CORRESPONDING TEXAS VOC RACT RULES—Continued

Source category in HGB area	Fulfilling RACT requirement, 30 TAC chapter 115
Refineries—Vacuum Producing Systems, Wastewater Separators, Unit Turnarounds.	§ 115.311–319 and § 115.131–139.
Synthetic Organic Chemical Manufacturing Industry—Air Oxidation Processes	§ 115.120–129.
Synthetic Organic Chemical Manufacturing Industry—Reactor Processes & Distillation Operations.	§ 115.120–129.
Shipbuilding and Ship Repair	§ 115.420–429.
Solvent Metal Cleaning	§ 115.412–419 and § 115.420–429.
Gasoline Service Stations	§ 115.221–229.
Petroleum Liquid Storage—Fixed Roof Tanks	§ 115.112–119.
Tank Trucks—Gasoline Loading Terminals	§ 115.211–219 or § 115.221–229.

G. Are there any negative declarations associated with the CTG source categories in the HGB Area?

Yes, Texas has declared that there are no existing major sources of rubber tire manufacturing, identified with the Standard Industrial Classification (SIC) 3011, in the HGB Area. As such, TCEQ does not have to adopt VOC regulations relevant to this source category at this time for the HGB Area. However, if a major source of this category locates in the HGB Area in future, then TCEQ will need to take appropriate regulatory measures for SIP purposes.

H. Why does the revision to 30 TAC Chapter 115 of the June 13, 2007 submittal meet RACT?

As stated elsewhere, we approved revisions to 30 TAC, Chapter 115 Control of Air Pollution from Volatile Organic Compounds on March 29, 2010 at 75 FR 15348. We now have reviewed these revisions to Chapter 115 and have determined that they are in agreement with EPA's Control Technique Guidelines (CTG) documents titled Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA–450/2–77–036, December 1977); Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–047, December 1978); and Alternative Control Techniques Document—Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks (EPA–453/R–94–001, January 1994). Also, see our Technical Support Document (TSD) prepared in conjunction with this document. Since these revisions are in agreement with our guideline documents, we are proposing that they satisfy RACT requirements, and by implementing these measures Texas is meeting the VOC RACT for liquid storage sources in the HGB Area.

I. Is Texas' approach to major Non-CTG sources for RACT determination in the HGB Area acceptable?

Under section 182(b)(2)(C) states must assure that major sources not covered by a CTG have RACT in place. Texas has identified a list, in its Appendix D of the April 6, 2010 submittal, of major VOC sources in the HGB Area to determine if any do not have RACT level controls in place and do not fall into the identified sectors for which EPA has issued a CTG. TCEQ reviewed the point source emissions inventory and title V databases to identify all major sources of VOC emissions. All sources in the title V database that were listed as a major source for VOC emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit emissions, the TCEQ reviewed sources that reported actual emissions as low as 10 tpy of VOC to account for the difference between actual and potential emissions. To be conservative, sites from the emissions inventory database with emissions of 10 tpy or more of NO_X or VOC that were not identified in the title V database and could not be verified as minor sources by other means are also included in the RACT analysis. We have reviewed TCEQ's April 6, 2010 submittal and find their approach to include these sources in the inventory of the sources acceptable. As documented in Appendix D, Texas found that each source was covered by existing rules and the corresponding VOC control measures were in place for the affected sources. Consistent with our finding under the 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005, and 71 FR 52676, September 6, 2006, Texas has met RACT for VOC and NO_X sources, and because Texas' approach in its April 06, 2010 submittal, in identifying major Non-CTG sources, is acceptable and consistent with our finding and State has certified that it has RACT in place; we are proposing to approve TCEQ's determination that VOC control measures in Chapter 115 meet RACT requirements for the major Non-CTG sources of VOC in the HGB Area under the 1997 8-Hour ozone NAAQS.

J. Is Texas' approach to RACT determination for CTG source categories based on the June 13, 2007 and April 6, 2010 submittals acceptable?

As a part of 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005; and 71 FR 52676, September 6, 2006, we stated that Texas has met RACT for VOC and NO_X sources. In the TSD developed for this action, we evaluated the corresponding sections of 30 TAC Chapter 115 for the source categories identified in Table 2 above in the HGB Area, and have reviewed these sections against our identified reference documents. In its April 6, 2010, submittal to EPA, TCEQ states that it has reviewed the HGB VOC rules and certifies that they satisfy RACT requirements for the 8-Hour ozone standard by the application of control technology that is reasonably available considering technological and economic feasibility. We are proposing a determination that Texas VOC rules are in agreement with the CAA's RACT requirements. Consequently, by implementing these control requirements (Chapter 115) Texas is satisfying the RACT requirements for CTG source categories identified in Table 2 of this document in the HGB Area under the 1997 8-Hour ozone standard.

K. Is Texas' approach to RACT determination for VOC sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?

Yes. The purpose of 30 TAC Chapter 115 rules for the HGB Area is to establish reasonable controls on the emissions of ozone precursors. Texas has reviewed its VOC rules and has certified that its rules satisfy RACT

requirements. As such and based upon the above two sections we are proposing to find that for both the CTG categories identified in Table 2 and all Non-CTG sources Texas has RACT-level controls in place for the HGB Area under the 1997 8-Hour ozone standard.

L. Is Texas' approach to for RACT determination for major NO_X sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?

Texas has identified a list of major NO_X sources in the HGB Area, in its Appendix D of the April 6, 2010 submittal. TCEQ reviewed the point source emissions inventory and title V databases to identify all major sources of NO_X emissions. All sources in the title V database that were listed as a major source for NO_X emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit emissions, the TCEQ reviewed sources that reported actual emissions as low as 10 tpy of NO_X to account for the difference between actual and potential emissions. To be conservative, sites from the emissions inventory database with emissions of 10 tpy or more of NO_X that were not identified in the title V database and could not be verified as minor sources by other means are also included in the RACT analysis. We have reviewed TCEQ's April 6, 2010 submittal and find their approach to include these sources in the inventory of the sources acceptable.

Texas reviewed the list of sources and certified that it has the appropriate NO_X control measures in place for the affected sources. In addition, as a part of 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005, and 71 FR 52676, September 6, 2006, Texas has met RACT for VOC and NO_X sources. We are proposing to approve TCEQ's determination that NO_X control measures in Chapter 117 meet RACT requirements for major sources of NO_X in the HGB Area under the 1997 8-Hour ozone NAAQS.

III. Proposed Action

Today, we are proposing to find that for VOC, CTG categories identified in Table 2 and major Non-CTG sources, and for NO_X, Texas has RACT-level controls in place for the HGB Area under the 1997 8-Hour ozone standard. The EPA had previously approved RACT for VOC and NO_X into Texas' SIP under the 1-Hour ozone standard. We are also proposing to approve the 2007 VMEP into Texas SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this proposed action approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 6, 2012.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–23152 Filed 9–18–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0713; FRL–9727–6]

Disapproval of Implementation Plan Revisions; State of California; South Coast VMT Emissions Offset Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw its final approvals of state implementation plan revisions submitted by the State of California to meet the vehicle-miles-traveled emissions offset requirement under the Clean Air Act for the Los Angeles-South Coast Air Basin 1-hour and 8-hour ozone nonattainment areas. EPA is also proposing to disapprove the same plan revisions. EPA is proposing the withdrawal and disapproval actions in response to a remand by the Ninth Circuit Court of Appeals in *Association of Irritated Residents* v. *EPA.* The effect of this action, if finalized as proposed, would be to trigger deadlines by which new plan revisions meeting the applicable requirements must be submitted by the State of California and approved by EPA to avoid sanctions and to avoid an obligation on EPA to promulgate a federal implementation plan.

DATES: Written comments must be received on or before October 19, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0713, by one of the following methods:

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

• *Email: tax.wienke@epa.gov.*

• *Mail or deliver:* Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mail Code AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, 415–947–4192, *tax.wienke@epa.gov.*

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

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I. Background

A. Regulatory Context

The Clean Air Act (CAA or Act) requires EPA to establish national ambient air quality standards (NAAQS or ''standards'') for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (see sections 108 and 109 of the CAA).

In 1979, under section 109 of the CAA, EPA established a primary health-based NAAQS for ozone [1] at 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202; (February 8, 1979). The Act, as amended in 1990, required EPA to designate as nonattainment any area that had been designated as nonattainment before the 1990 Amendments [section 107(d)(1)(C) of the Act; 56 FR 56694; (November 6, 1991)]. The Act further classified 1-hour ozone nonattainment areas, based on the severity of their nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the 1-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Extreme areas were subject to the most stringent planning requirements and were provided the most time to attain the standard, until November 15, 2010. The various ozone planning requirements to which Extreme ozone nonattainment areas are subject are set forth in section 172(c) and section 182(a)–(e) of the CAA. Of particular importance for the purposes of this proposed action, section 182(d)(1)(A) requires the following:

> Within 2 years after November 15, 1992, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or related emissions and congestion rather than reduce them.

EPA believes that it is appropriate to treat the three required elements of section 182(d)(1)(A) (*i.e.,* offsetting emissions growth, attainment of the rate-of-progress (ROP) reduction, and attainment of the ozone NAAQS) as separable. As to the first element of CAA section 182(d)(1)(A) (*i.e.,* offsetting emissions growth caused by growth in vehicle miles travelled (VMT)), EPA had historically interpreted this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. See, *e.g.,* 57 FR 13498, at 13521–15323; (April 16, 1992). This proposed rule relates only to the first element of section 182(d)(1)(A) (*i.e.,* offsetting emissions growth caused by growth in VMT). Herein, we refer to this element as the Vehicle Miles Traveled (VMT) emissions offset requirement (''VMT emissions offset requirement'') and the demonstration submitted to us to address this requirement as the ''VMT emissions offset demonstration.''

In 1997, EPA replaced the 1-hour ozone standard with an 8-hour ozone standard of 0.08 ppm. See 62 FR 38856; (July 18, 1997).[2] We promulgated final rules to implement the 1997 8-hour ozone standard in two phases. The ''Phase 1'' rule, which was issued on April 30, 2004 (69 FR 23951) establishes, among other things, the

[1] Ground-level ozone or smog is formed when oxides of nitrogen (NO_X), volatile organic compounds (VOC), and oxygen react in the presence of sunlight, generally at elevated temperatures. Strategies for reducing smog typically require reductions in both VOC and NO_X emissions. Ozone causes serious health problems by damaging lung tissue and sensitizing the lungs to other irritants. When inhaled, even at very low levels, ozone can cause acute respiratory problems, aggravate asthma, temporary decreases in lung capacity of 15 to 20 percent in healthy adults, inflammation of lung tissue, lead to hospital admissions and emergency room visits, and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia.

[2] In 2008, EPA tightened the 8-hour ozone NAAQS to 0.075 ppm, see 73 FR 16436 (March 27, 2008). Today's proposed action relates only to SIP requirements arising from the classifications and designations of the South Coast with respect to the 1979 1-hour ozone and 1997 8-hour ozone standards.

classification structure and corresponding attainment deadlines, as well as the anti-backsliding principles for the transition from the 1-hour ozone standard to the 8-hour ozone standard. For an area that was designated nonattainment for the 1-hour ozone standard at the time when EPA designated it as nonattainment for the 1997 8-hour ozone standard as part of the initial 8-hour ozone designations, most of the requirements that had applied by virtue of the area's classification for the 1-hour ozone standard continue to apply even after revocation of the 1-hour ozone standard (which occurred in June 2005 for most areas). See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f). Thus, for example, an area that was designated nonattainment and classified as Extreme for the 1-hour ozone standard at the time of an initial designation of nonattainment for the 8-hour standard remains subject to the VMT emissions offset requirement under CAA section 182(d)(1)(A) for the 1-hour ozone NAAQS even if the area would not otherwise have been subject to that particular requirement based on the area's classification for the 1997 8-hour ozone standard. See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f)(11).

The Phase 2 rule, which was issued on November 29, 2005 (70 FR 71612), addresses the SIP obligations for the 1997 8-hour ozone standard. Under the Phase 2 rule, an area that is designated as nonattainment for the 1997 8-hour ozone standard, and classified under subpart 2 (of part D of title I of the CAA), is subject to the requirements of subpart 2 that apply for that classification. See 40 CFR 51.902(a). Among the requirements for areas classified as Severe or Extreme for the 1997 8-hour ozone standard is the VMT emissions offset requirement under CAA section 182(d)(1)(A).

B. South Coast Ozone Designations and Classifications and Related SIP Revisions

As noted above, the CAA, as amended in 1990, required EPA to designate as nonattainment any area that had been designated as nonattainment before the 1990 Amendments. The CAA also required EPA to classify nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme depending upon the design value of the area. On November 6, 1991, EPA designated the Los Angeles-South Coast Air Basin Area (''South Coast'') [3] as nonattainment and classified it as Extreme for the 1-hour ozone standard; thus the area had an attainment date no later than November 15, 2010 (56 FR 56694).

The California Air Resources Board (CARB) has submitted a number of SIP revisions over the years for the South Coast Air Basin to address 1-hour ozone SIP planning requirements. Specifically, in 1994, CARB submitted a 1-hour ozone SIP that, among other things, included for the South Coast an attainment demonstration, ROP demonstrations, and transportation control measures (TCMs). In 1997, EPA approved the 1994 Ozone SIP as it applied to the South Coast for the 1-hour standard. See 62 FR 1150; (January 8, 1997).

In 1997 and 1999, CARB submitted revisions to the 1994 South Coast 1-Hour Ozone SIP, including revised ROP demonstrations, and a revised attainment demonstration (''1997/1999 South Coast 1-Hour Ozone SIP''). See 65 FR 18903; (April 10, 2000). In 2004, CARB submitted revisions to the 1997/1999 South Coast 1-Hour Ozone SIP (''2003 South Coast 1-Hour Ozone SIP''). In 2008, the 2003 South Coast 1-Hour Ozone SIP was supplemented by submittal of a VMT emissions offset demonstration [4] that was intended to comply with the VMT emissions offset requirement by showing that there would be no upturn in emissions between the area's base year for the SIP revision and the area's attainment year. In 2009, EPA disapproved the revised ROP demonstrations and attainment demonstration in the 2003 South Coast 1-Hour Ozone SIP, but approved the VMT emissions offset demonstration that had been submitted in 2008. 74 FR 10176; (March 10, 2009).[5]

With respect to the 1997 8-hour standard, EPA designated the South Coast as nonattainment and classified the area as ''Severe-17,'' but later approved a request by California to reclassify the South Coast to ''Extreme.'' See 69 FR 23858; (April 30, 2004) and 75 FR 24409; (May 5, 2010). In 2007, CARB submitted a SIP revision to address the 8-hour ozone SIP planning requirements for the South Coast (''2007 South Coast 8-hour Ozone SIP''). The 2007 South Coast 8-Hour Ozone SIP included, among many other elements, a VMT emissions offset demonstration addressing the VMT emissions offset requirement under CAA section 182(d)(1)(A).[6] Consistent with the approach used for the demonstration submitted for 1-hour ozone purposes in 2008, the 2007 South Coast 8-Hour Ozone SIP showed compliance with the VMT emissions offset requirement, as then interpreted by EPA, by showing that aggregate motor vehicle emissions are projected to decrease each year from the base year through the attainment year (2024).

In March 2012, EPA approved the 2007 South Coast 8-Hour Ozone SIP, including the VMT emissions offset demonstration addressing the VMT emissions offset requirement under CAA section 182(d)(1)(A). See 77 FR 12674; (March 1, 2012).

C. Litigation on EPA's Final Action on 2003 South Coast 1-Hour Ozone SIP

In approving the VMT emissions offset demonstration that was submitted by the South Coast Air Quality Management District to supplement the 2003 South Coast 1-Hour Ozone SIP, EPA applied its then-longstanding interpretation of the VMT emissions offset requirement under CAA section 182(d)(1)(A) that no TCMs are necessary if aggregate motor vehicle emissions are projected to decline each year from the base year of the plan to the attainment year. See 74 FR 10176, at 10179–10180; (March 10, 2009). EPA's 2009 approval was challenged in the U.S. Court of Appeals for the Ninth Circuit, and, in 2011, the court ruled against EPA, determining that EPA incorrectly interpreted the statutory phrase ''growth in emissions'' in section 182(d)(1)(A) as meaning a growth in ''aggregate motor vehicle emissions.'' In other words, the court ruled that additional transportation control strategies and measures are required whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. *Association of Irritated Residents* v. *EPA,* 632 F.3d 584, at 596–597 (9th Cir. 2011), reprinted as

[3] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[4] Letter from Elaine Chang, Deputy Executive Officer, South Coast Air Quality Management District, dated September 10, 2008, approved at 40 CFR 52.220(c)(339)(ii)(B)(2).

[5] In response to comments on EPA's proposal to partially approve and partially disapprove the 2003 South Coast 1-Hour Ozone SIP, EPA indicated that the second and third elements of CAA section 182(d)(1)(A) were satisfied in 1997 when EPA approved the 1994 South Coast 1-Hour Ozone SIP's transportation control strategies and TCMs, such as TCM–1 (''Transportation Improvements''), which includes the capital and non-capital facilities, projects, and programs contained in the Regional Mobility Element and programmed through the Regional Transportation Improvement Program (RTIP) process to reduce emissions, in the same action in which EPA approved the South Coast ROP and attainment demonstrations. See 74 FR 10176, at 10179; (March 10, 2009).

[6] See pages 6–23 and 6–27 (table 6–12) of the Final 2007 Air Quality Management Plan, June 2007, prepared by the South Coast Air Quality Management District.

amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''AIR v. EPA'').

Based on this reasoning, the court remanded the approval of the VMT emissions offset demonstration back to EPA for further proceedings consistent with the opinion. In May 2011, EPA filed a petition for panel rehearing requesting the court to reconsider its decision as to the VMT emissions offset requirement. In January 2012, the court denied the request and issued the mandate shortly thereafter.

D. Litigation on EPA's Final Action on 2007 South Coast 8-Hour Ozone SIP

As of December 15, 2011, the time of signature on the final rule approving the 2007 South Coast 8-hour Ozone SIP, the court had not yet responded to our petition for panel rehearing in *AIR* v. *EPA.* Notwithstanding adverse comments on the proposed approval of the VMT emissions offset demonstration in the 2007 South Coast 8-Hour Ozone SIP, EPA proceeded to approve the demonstration on the basis of the same rationale that had been rejected by the Ninth Circuit in connection with the VMT emissions offset demonstration submitted as part of the 2003 South Coast 1-Hour Ozone SIP. The final rule was ultimately published on March 1, 2012 (77 FR 12674). Shortly thereafter, several environmental and community groups filed a lawsuit in the Ninth Circuit challenging that approval. *Communities for a Better Environment, et al.* v. *EPA,* No. 12–71340.

II. Proposed Withdrawal of Previous Approvals, and Proposed Disapproval, of VMT Emissions Offset Demonstrations

As noted above, the Ninth Circuit rejected EPA's long-standing interpretation of the first element of section 182(d)(1)(A) that states could demonstrate compliance with the VMT emissions offset requirement through submittal of aggregate motor vehicle emissions estimates showing year-over-year declines in such emissions. These demonstrations formed the basis for our consideration and approval of the section 182(d)(1)(A) VMT emissions offset demonstrations submitted in connection with the 2003 South Coast 1-Hour Ozone SIP and the 2007 South Coast 8-Hour Ozone SIP. In response to the court's rejection of our interpretation of the Act and its remand of our action approving the VMT emissions offset demonstration for the 1-hour ozone standard, we are proposing the following two actions.

First, we are proposing to withdraw our previous approval of the VMT emissions offset demonstration in our March 8, 2009 final action on the 2003 South Coast 1-Hour Ozone SIP. Second, we are proposing to withdraw our March 1, 2012 approval of the portion of the 2007 South Coast 8-Hour Ozone SIP that was submitted to address the VMT emissions offset requirement of CAA section 182(d)(1)(A).

Withdrawal of our approvals of the two section 182(d)(1)(A) demonstrations would remove them from the California SIP and we would be obligated to take action on them under section 110(k), unless the State were to also withdraw the demonstrations from their submissions to us. To date, the State has not withdrawn these demonstrations. Therefore, in this action, we are proposing to disapprove them. Specifically, we are proposing to disapprove the demonstrations submitted by California to demonstrate compliance with the VMT emissions offset requirement under CAA section 182(d)(1)(A) with respect to the 1-hour and 8-hour ozone standards because they are predicated on EPA's previous interpretation of section 182(d)(1)(A) that has been rejected by the Ninth Circuit. The demonstrations are not consistent with the court's ruling on the requirements of section 182(d)(1)(A) because they fail to identify, compared to a baseline assuming no VMT growth, the level of increased emissions resulting solely from VMT growth and to show how such increased emissions have been offset through adoption and implementation of transportation control strategies and transportation control measures.

III. Proposed Action and Request for Public Comment

EPA is proposing to withdraw and to disapprove our final approvals of SIP revisions submitted by the State of California to demonstrate compliance with the VMT emissions offset requirement under CAA section 182(d)(1)(A) with respect to the 1-hour and 8-hour ozone standards in the South Coast nonattainment area. EPA is proposing this action in response to a decision of the Ninth Circuit in *AIR* v. *EPA.* Under section 110(k) of the Clean Air Act, we are proposing to disapprove these same plan elements because they reflect an approach to showing compliance with section 182(d)(1)(A) that was rejected by the court as inconsistent with the CAA section 182(d)(1)(A) VMT emissions offset requirement. Should we finalize the disapproval proposed here, the offset sanction in CAA section 179(b)(2) would apply in the South Coast ozone nonattainment area 18 months after the effective date of the final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. These sanctions will apply unless we take final action approving SIP revisions meeting the relevant requirements of the CAA prior to the time the sanctions would take effect. If we propose approval of a SIP revision meeting the relevant requirements of the CAA and determine at that time that it is more likely than not the deficiency has been corrected, sanctions would be deferred. See 40 CFR 52.31 which sets forth when sanctions apply and when they may be stopped or deferred.

In addition to the sanctions, CAA section 110(c) provides that EPA must promulgate a federal implementation plan addressing the deficiency that is the basis for this disapproval two years after the effective date of the disapproval unless we have approved a revised SIP before that date.

We are soliciting comments on these proposed actions. Comments will be accepted for 30 days following publication of this proposal in the **Federal Register**. We will consider all comments in our final rulemaking.

IV. Statutory and Executive Order Reviews

A. Executive Order 12988, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 128665, entitled ''Regulatory Planning and Review.''

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).

C. Regulatory Reduction Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove

requirements that the State is already imposing. Therefore, because the proposed withdrawal of previous approvals of certain SIP revisions, and proposed disapproval of the same, do not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed withdrawal and disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to withdraw previous approvals of certain SIP revisions, and proposes disapproval of the same, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to withdraw previous approvals of certain SIP revisions implementing a Federal standard, and proposes disapproval of the same, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. 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. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to withdraw previous approvals of certain SIP revisions implementing a federal standard, and proposes disapproval of the same.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this

proposed rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to withdraw previous approvals of certain SIP revisions, and proposes disapproval of the same, and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 30, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–22973 Filed 9–18–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0721; FRL–9727–5]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision; South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to a remand by the Ninth Circuit Court of Appeals, and pursuant to the Clean Air Act, EPA is proposing to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin (South Coast) is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. If EPA finalizes this proposed finding of substantial inadequacy, California would be required to revise its SIP to correct these deficiencies within 12 months of the effective date of our final rule. If EPA finds that California has failed to submit a complete SIP revision as required by a final rule or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan. EPA is also proposing that if EPA makes such a finding or disapproval, sanctions would apply consistent with our regulations, such that the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on the State curing the SIP deficiencies.

DATES: Written comments must be received on or before October 19, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0721, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: tax.wienke@epa.gov.*
- *Mail or deliver:* Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mail Code AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, 415–947–4192, *tax.wienke@epa.gov.*

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

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I. Background

A. Regulatory Context

The Clean Air Act (CAA or Act) requires EPA to establish national ambient air quality standards (NAAQS or ''standards'') for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (see sections 108 and 109 of the CAA).

In 1979, under section 109 of the CAA, EPA established a primary health-based NAAQS for ozone [1] at 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979). The Act, as amended in 1990, required EPA to designate as nonattainment any area that had been designated as nonattainment before the 1990 Amendments [section 107(d)(1)(C) of the Act; 56 FR 56694; (November 6, 1991)]. The Act further classified these areas, based on the severity of their

[1] Ground-level ozone or smog is formed when oxides of nitrogen (NO_X), volatile organic compounds (VOC), and oxygen react in the presence of sunlight, generally at elevated temperatures. Strategies for reducing smog typically require reductions in both VOC and NO_X emissions. Ozone causes serious health problems by damaging lung tissue and sensitizing the lungs to other irritants. When inhaled, even at very low levels, ozone can cause acute respiratory problems, aggravate asthma, temporary decreases in lung capacity of 15 to 20 percent in healthy adults, inflammation of lung tissue, lead to hospital admissions and emergency room visits, and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia.

nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the 1-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Extreme areas were subject to the most stringent planning requirements and were provided the most time to attain the standard, until November 15, 2010. The various ozone planning requirements to which Extreme ozone nonattainment areas are subject are set forth in section 172(c) and section 182(a)–(e) of the CAA.

In 1997, EPA replaced the 1-hour ozone standard with an 8-hour ozone standard of 0.08 ppm. See 62 FR 38856 (July 18, 1997).[2] We promulgated final rules to implement the 1997 8-hour ozone standard in two phases. The ''Phase 1'' rule, which was issued on April 30, 2004 (69 FR 23951) establishes, among other things, the classification structure and corresponding attainment deadlines, as well as the anti-backsliding principles for the transition from the 1-hour ozone standard to the 8-hour ozone standard. For an area that was designated nonattainment for the 1-hour ozone standard at the time EPA designated it as nonattainment for the 1997 8-hour ozone standard as part of the initial 8-hour ozone designations, most of the requirements that had applied by virtue of the area's classification for the 1-hour ozone standard continue to apply even after revocation of the 1-hour ozone standard (which occurred in June 2005 for most areas). See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f). Thus, for example, an area that was designated nonattainment and classified as Extreme for the 1-hour ozone standard at the time of an initial designation of nonattainment for the 1997 8-hour standard remains subject to the requirement to have a fully-approved attainment demonstration meeting Extreme area requirements for the 1-hour ozone standard or an alternative as provided under 40 CFR 51.905(a)(1)(ii). See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f)(13).

The Phase 2 rule, which was issued on November 29, 2005 (70 FR 71612), addresses the SIP obligations for the 1997 8-hour ozone standard. Under the Phase 2 rule, an area that is designated as nonattainment for the 1997 8-hour ozone standard, and classified under subpart 2 (of part D of title I of the CAA), is subject to the requirements of subpart 2 that apply for that classification. See 40 CFR 51.902(a).

B. South Coast Ozone Designations and Classifications and Related SIP Revisions

As noted above, the CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard. The CAA also required EPA to classify nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme depending upon the design value of the area. On November 6, 1991, EPA designated the Los Angeles-South Coast Air Basin Area (''South Coast'')[3] as nonattainment and classified it as Extreme for the 1-hour ozone standard; thus the area had an attainment date no later than November 15, 2010 (56 FR 56694).

The California Air Resources Board (CARB) has submitted a number of SIP revisions over the years for the South Coast to address 1-hour ozone SIP planning requirements. Specifically, in 1994, CARB submitted a 1-hour ozone SIP that, among other things, included for the South Coast an attainment demonstration, a ''rate of progress'' (ROP) demonstration, and transportation control measures (TCMs). In 1997, EPA approved the 1994 South Coast Ozone SIP as it applied to the South Coast for the 1-hour standard. See 62 FR 1150 (January 8, 1997).

In 1997 and 1999, CARB submitted revisions to the 1994 South Coast 1-Hour Ozone SIP, including a revised ROP demonstration and a revised attainment demonstration (''1997/1999 South Coast 1-Hour Ozone SIP''), which EPA approved in 2000. See 65 FR 18903 (April 10, 2000). In 2004, CARB submitted revisions to the 1997/1999 South Coast 1-Hour Ozone SIP (''2003 South Coast 1-Hour Ozone SIP'') intended to update and replace the State's control measure commitments in the 1997/1999 South Coast 1-Hour Ozone SIP. See 73 FR 63408, 63410 (October 24, 2008). The revised attainment demonstration submitted as part of the 2003 South Coast 1-Hour Ozone SIP included updated emissions inventories showing higher mobile source emissions than the State had previously projected and updated modeling that indicated a lower ''carrying capacity'' in the South Coast air basin, as well as additional commitments by CARB to achieve specified amounts of VOC and NO_X emission reductions needed for attainment by the applicable attainment date (November 15, 2010) in light of these updated analyses. *Id.* at 73 FR 63410, 63416 (October 24, 2009). In 2008, however, CARB withdrew key components of the emission reduction commitments in the 2003 South Coast 1-Hour Ozone SIP. See 73 FR at 63410–12 (citing letter from James Goldstene, Executive Officer, CARB, dated February 13, 2008).

In 2009, EPA approved certain elements of the 2003 South Coast 1-Hour Ozone SIP[4] but disapproved the revised ROP demonstrations and attainment demonstration in the 2003 South Coast 1-Hour Ozone SIP, in large part because CARB's 2008 withdrawal of key components of the emission reduction commitments submitted in 2004 rendered the plan insufficient to demonstrate attainment and to meet ROP milestones. 74 FR 10176, 10181 (March 10, 2009). More specifically as to the attainment demonstration, EPA concluded that the 2003 South Coast 1-Hour Ozone SIP did not meet the CAA section 182(c)(2)(A) requirement for a demonstration of attainment of the 1-hour ozone NAAQS by the applicable attainment date because the modeled attainment demonstration ''relies upon emission reductions from [CARB's] control strategy as set forth in the 2003 State Strategy, most of which was withdrawn by [CARB] on February 13, 2008.'' 73 FR 63408, 63416; (October 24, 2008). EPA also concluded that the disapproval of the attainment demonstration did not trigger sanctions clocks or a Federal implementation plan (FIP) obligation because the approved SIP already contained an approved 1-hour ozone attainment demonstration meeting CAA requirements. See 74 FR at 10177, 10181.

With respect to the 1997 8-hour ozone standard, EPA initially designated the South Coast as nonattainment and classified it as ''Severe-17,'' but later approved a request by California to reclassify the area to ''Extreme.'' See 69 FR 23858 (April 30, 2004) and 75 FR 24409 (May 5, 2010). In 2007, CARB

[2] In 2008, EPA tightened the 8-hour ozone NAAQS to 0.075 ppm, see 73 FR 16436 (March 27, 2008). Today's proposed action relates only to SIP requirements arising from the classifications and designations of the South Coast with respect to the 1-hour ozone and 1997 8-hour ozone standards.

[3] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[4] Among the elements EPA approved in 2009 were control measures adopted by the California Air Resources Board, including a control measure, referred to as ''PEST–1'' that carried forward the existing Pesticide Element from the 1994 California 1-Hour Ozone SIP that EPA approved in 1997, and a demonstration submitted by the South Coast Air Quality Management District addressing the first element of CAA section 182(d)(1)(A), referred to herein as the ''VMT emissions offset demonstration.''

submitted a SIP revision to address the Extreme 8-hour ozone SIP planning requirements for the South Coast (''2007 South Coast 8-hour Ozone SIP''), which EPA fully approved in March 2012. See 77 FR 12674 (March 1, 2012).

C. Litigation on EPA's 2009 Final Action on the South Coast 2003 1-Hour Ozone SIP

On May 8, 2009, several environmental and community groups filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's March 2009 partial approval and partial disapproval of the 2003 South Coast 1-Hour Ozone SIP. *Association of Irritated Residents et al.* v. *EPA,* Case Nos. 09–71383 and 09–71404. The case centered on three main issues: (1) The consequences of EPA's final disapproval of the attainment demonstration; (2) the necessity for substantive review of the previously-approved 1994 Pesticide Element brought forward in the 2003 State Strategy; and (3) EPA's interpretation of CAA section 182(d)(1)(A), which requires SIPs for ''Severe'' or ''Extreme'' ozone nonattainment areas to include specific transportation control strategies and transportation control measures (TCMs) to offset any growth in emissions from growth in vehicle miles traveled (''VMT emissions offset requirement''), and EPA's approval of the State's demonstration of compliance with this SIP requirement.[5]

On February 2, 2011, the Ninth Circuit ruled in favor of the petitioners on all three issues and remanded EPA's 2009 final action on the 2003 South Coast 1-Hour Ozone SIP. *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011). In so doing, the court held that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves a new attainment demonstration unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS. Specifically, the court rejected EPA's argument that there is no FIP duty where the EPA had already approved into the SIP the required plan element and the submission disapproved was voluntarily submitted by the State to replace the existing approved SIP element. The court briefly referenced its analysis of the FIP provisions to conclude that the disapproval also triggered mandatory sanctions. *Id.* at 591–594.

As to the 1994 Pesticide Element, the court held that EPA had an affirmative duty to review the substance of the element anew in light of subsequent litigation over the Pesticide Element that revealed approvability issues not accounted for in EPA's previous review and approval of the element. *Id.* at 594–595. EPA is addressing this portion of the court's decision in a separate rulemaking. See footnote #5 of this document.

Finally, the court disagreed with EPA's interpretation of the VMT emissions offset requirement and found that the plain language of the Act requires SIPs subject to CAA section 182(d)(1)(A) to include additional transportation control strategies and measures whenever vehicle emissions are projected to be higher, due to growth in VMT, than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing. *Id.* at 595–597. EPA is addressing this portion of the court's decision in a separate rulemaking. See footnote #5 of this document.

On May 5, 2011, EPA filed a petition for panel rehearing requesting the court to reconsider its decision on the issue of whether CAA section 179 sanctions are triggered by disapproval of a revision to an already-approved SIP element, and on the court's interpretation of CAA section 182(d)(1)(A).[6] On January 27, 2012, the Ninth Circuit denied EPA's petition for rehearing but issued an amended opinion deleting references to the imposition of sanctions following disapproval of the South Coast plan. The mandate in the case issued on February 13, 2012. *See Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''*AIR* v. *EPA''*). The decision, as amended, states *inter alia* that ''EPA should have ordered California to submit a revised attainment plan for the South Coast after it disapproved the 2003 Attainment Plan'' and remands EPA's action ''for further proceedings consistent with [the] opinion.'' *Id.* at 681.

D. Determination of South Coast's Failure to Attain 1-Hour Ozone Standard

On December 30, 2011, EPA determined that the South Coast extreme ozone nonattainment area had failed to attain the 1-hour ozone standard by its applicable attainment date of November 15, 2010. 76 FR 82133; (December 30, 2011). This determination was based on quality-assured and certified ambient air quality monitoring data from 2008–2010, the three-year period preceding the applicable attainment date. *Id.* EPA made this determination pursuant to its obligation and authority under CAA section 301(a) and the relevant portion of section 181(b)(2) to ensure implementation of 1-hour ozone anti-backsliding contingency measures and section 185 fee program requirements. *Id.* at 82145.

II. Rationale for Proposed SIP Call

The Ninth Circuit concluded in *AIR* v. *EPA* that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves an attainment demonstration submitted to replace an already-approved attainment demonstration in the SIP, unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS. *AIR* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), *as amended at* 686 F.3d 668. Consistent with this directive and in response to the court's conclusion that ''EPA should have ordered California to submit a revised attainment plan for the South Coast after it disapproved the 2003 Attainment Plan,'' *id.* at 681, EPA is proposing to issue a SIP call under CAA section 110(k)(5) to require California to submit a new attainment demonstration for the 1-hour ozone standard in the South Coast.

Section 110(k)(5) of the CAA states, in relevant part, as follows:

> Whenever the Administrator finds that the applicable implementation plan for an area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, * * * or to otherwise comply with any requirement of [the Act], the Administrator shall require the State to revise the plan as necessary to correct such inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates

[5] EPA is addressing issues #2 and #3 in separate rulemakings. With respect to issue #2 (the continuation of the 1994 Pesticide Element, also known as ''PEST–1''), the EPA Region IX Regional Administrator signed a final rule on August 14, 2012 approving certain State fumigant regulations and a revised Pesticide Element commitment for San Joaquin Valley, thereby responding to the remand in the *Association of Irritated Residents* case. See, also, 77 FR 24441; (April 24, 2012) (proposed rule on fumigant regulations and revised Pesticide Element for San Joaquin Valley). With respect to issue #3 (VMT emissions offset requirement), EPA is proposing action in a separate document in today's **Federal Register**.

[6] See Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, Petition for Panel Rehearing.

applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

Our proposed SIP call is based on the evidence submitted by California in the form of the 2003 South Coast 1-Hour Ozone Plan that the approved 1997/1999 South Coast 1-Hour Ozone SIP was substantially inadequate to provide for attainment of the 1-hour ozone standard by the applicable attainment date of November 15, 2010. Two major developments that occurred after EPA approval of the 1997/1999 South Coast 1-Hour Ozone SIP led the State of California to reconsider the adequacy of the control strategy for attaining the 1-hour ozone standard in the South Coast by the applicable attainment date (2010).

First, CARB released a significant update to California's mobile source emissions model (EMFAC2002) that resulted in significantly higher motor vehicle emissions estimates than previously calculated, and second, South Coast Air Quality Management District (SCAQMD) updated its ozone modeling and concluded that the carrying capacity of the South Coast Air Basin was significantly lower than previously calculated. See, generally, appendix III (''Base and Future Year Emission Inventories'') and appendix V (''Modeling and Attainment Demonstrations'') of the SCAQMD's 2003 South Coast Air Quality Management Plan (AQMP), August 2003.

Together, these technical considerations prompted CARB and SCAQMD to conclude that more control measures would be necessary than contained in the 1997/1999 South Coast 1-Hour Ozone SIP to attain the 1-hour ozone standard by 2010. In reference to the 1997/1999 South Coast 1-Hour Ozone SIP, the 2003 South Coast 1-Hour Ozone SIP states: ''The Plan is consistent with and builds upon the approaches taken in the 1997 AQMP and the 1999 Amendments to the Ozone SIP for the South Coast Air Basin for the attainment of the federal ozone air quality standard. However, this revision points to the urgent need for additional emission reductions (beyond those incorporated in the 1997/99 Plan) to offset increased emission estimates from mobile sources and meet all federal criteria pollutant standards within the time frames allowed under the federal Clean Air Act.'' See SCAQMD, 2003 Air Quality Management Plan,'' August 2003, pages ES–1 and ES–2.

In 2003, EPA approved the use of EMFAC2002 for SIP development purposes, and in 2004, EPA found the 1-hour ozone motor vehicle emissions budgets (MVEBs) in the 2003 South Coast 1-Hour Ozone SIP to be adequate for transportation conformity purposes. See 68 FR 15720; (April 1, 2003) and 69 FR 15325; (March 25, 2004). Adequacy findings for transportation conformity purposes are generally based on cursory reviews of submitted plans, but EPA's approval of EMFAC2002 and finding of adequacy of the MVEBs in 2003 South Coast 1-Hour Ozone SIP show general agreement by EPA with the technical foundation for the 2003 South Coast 1-Hour Ozone SIP, which highlights the inadequacy of the attainment demonstration in the 1997/1999 South Coast 1-Hour Ozone Plan.

In addition, in 2011, EPA determined, based on quality-assured and certified ambient air quality monitoring data, that the South Coast area has failed to attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2010. 76 FR 82133; (December 30, 2011). EPA's 2011 determination of failure to attain the standard by the applicable attainment date provides further support for our proposed action because it establishes, as a factual matter, that the 1997/1999 South Coast 1-Hour Ozone SIP failed to achieve its stated purpose of bringing the South Coast area into attainment of the 1-hour ozone NAAQS by the applicable attainment date.

In light of the evidence discussed above, we propose to find that the approved 1997/1999 South Coast 1-Hour Ozone SIP is substantially inadequate to provide for attainment of the 1-hour ozone standard and is therefore substantially inadequate to comply with EPA's ''anti-backsliding'' requirement at 40 CFR 51.905(a)(1)(i) to adopt and implement such a plan for the South Coast.

III. Consequences of Proposed SIP Call

EPA is proposing to require the State of California to submit, within 12 months, a SIP revision meeting the requirements of CAA section 182(c)(2)(A)[7] and demonstrating attainment of the 1-hour ozone standard in the South Coast as expeditiously as practicable but no later than five years from the effective date of a final SIP call unless the State can justify a later date, not to exceed 10 years beyond the effective date of the final SIP call, by considering the severity of the remaining nonattainment problem in the South Coast and the availability and feasibility of pollution control measures. See CAA section 172(a)(2).

The SIP call provisions of CAA section 110(k)(5) direct EPA, ''to the extent [EPA] deems appropriate,'' to ''subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).'' By relying on section 172(a)(2) as the basis for the applicable attainment date for the South Coast, we are subjecting the State to the same CAA requirement that applied at the time that the State developed and submitted the 1997/1999 South Coast 1-Hour Ozone SIP, because, at that time, the area was an extreme ozone area with an attainment date of 2010 and subject to the potential for a finding of failure to attain by the applicable attainment date under CAA section 179(c) that would trigger a requirement under CAA section 179(d) to submit a new plan meeting the requirements of section 172.

The 12-month deadline for submittal of a revised attainment demonstration plan is appropriate in light of the time that has elapsed since the *AIR* decision was published and the significant planning effort that the SCAQMD has already undertaken to develop a new 1-hour ozone attainment plan but also recognizing the potential need to develop additional control measures, beyond those already adopted for the purposes of the South Coast 8-hour Ozone SIP, given the geographic extent and frequency of exceedances of the 1-hour ozone standard. See, e.g., the 1-hour ozone summary data for 2008–2010 published at 76 FR 56694, at 56697; (September 14, 2011).

If EPA subsequently finds that California has failed to submit a complete SIP revision that responds to a final SIP call, CAA section 179(a) provides for EPA to issue a finding of State failure. Such a finding starts mandatory 18-month and 24-month sanctions clocks and a 24-month clock for promulgation of a FIP by EPA. The two sanctions that apply under CAA section 179(b) are the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment new source review program and restrictions on highway

[7] Under CAA section 182(c)(2)(A), the State must submit a revision to the SIP that includes a demonstration that the plan, as revised, will provide for attainment of the ozone NAAQS. The attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the EPA to be at least as effective.

funding. However, section 179 leaves it up to the Administrator to decide the order in which these sanctions apply. EPA issued an order of sanctions rule in 1994 (59 FR 39832, August 4, 1994, codified at 40 CFR 52.31) but did not specify the order of sanctions where a state fails to submit or submits a deficient SIP in response to a SIP call. However, the order of sanctions specified in that rule (40 CFR 52.31) should apply here for the same reasons discussed in the preamble to that rule.

Thus, if EPA issues a final SIP call and California fails to submit the required SIP revision, or submits a revision that EPA determines is incomplete or that EPA disapproves, EPA proposes that the 2-to-1 emission offset requirement will apply for all new sources subject to the nonattainment new source review program 18 months following such finding or disapproval unless the State corrects the deficiency before that date. EPA proposes that the highway funding restrictions sanction will also apply 24 months following such finding or disapproval unless the State corrects the deficiency before that date. EPA is also proposing that the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions would apply.

In addition, CAA section 110(c) obligates EPA to promulgate a FIP addressing the deficiency that is the basis for a finding of failure to submit or a disapproval within two years after the effective date of such finding or disapproval, unless EPA has approved a revised SIP correcting the deficiency before that date.

IV. Proposed Action and Request for Public Comment

EPA is proposing to find, pursuant to section 110(k)(5) of the CAA, that the California SIP is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the one-hour ozone NAAQS in the South Coast. If EPA finalizes this proposal, California will be required to submit a SIP revision correcting the deficiency within 12 months of the effective date of EPA's final rule.

We will accept comments on this proposal for 30 days following publication of this proposed rule in the **Federal Register.** We will consider all submitted comments in our final rulemaking.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, a finding of substantial inadequacy and subsequent obligation for a State to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and State obligation do not directly impose any new regulatory requirements. In addition, the State obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 30, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–22972 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0611; FRL–9730–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern lead emissions from large lead-acid battery recycling facilities. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 19, 2012.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2012–0611, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email.

www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1420.1	Emissions Standard For Lead From Large Lead-Acid Battery Recycling Facilities.	11/5/10	9/27/11

On October 24, 2011, EPA determined that the submittal for SCAQMD Rule 1420.1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rules 1420.1 in the SIP.

C. What is the purpose of the submitted rule?

Lead is classified as a hazardous air pollutant under the Clean Air Act (CAA) Section 112 (b). On November 12, 2008, The EPA published the final rule on the Lead National Ambient Air Quality Standards (NAAQS). The revisions to the primary and secondary Lead NAAQS were to provide increased protection for children and other at-risk populations against an array of health effects. Such health effects most notably include neurological effects in children, including neurocognitive and neurobehavioral effects. Section 110(a) of the CAA requires States to submit regulations that control lead emissions. SCAQMD Rule 1420.1 imposes these revised emission standards for large lead-acid battery recycling facilities. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action.

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). A SIP, outlining the strategy to demonstrate attainment with the lead NAAQS, must be submitted within 18 months of the final designation date. In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT (see CAA sections 189(a)(1) and 189(b)(1)). The SCAQMD regulates a lead nonattainment (see 40 CFR part 81), so SCAQMD must implement RACM/RACT.

Guidance and policy documents that we use to evaluate enforceability and RACM/RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register.**

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

4. ''Implementation of the 2008 Lead National Ambient Air Quality Standards Guide to Developing Reasonably Available Control Measures (RACM) for Controlling Lead Emissions,'' EPA 457/R–12–001, March 2012.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACM/RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve The Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP

submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 5, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–23154 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0734; FRL–9727–4]

Withdrawal of Approval of Air Quality Implementation Plans; California; San Joaquin Valley; 1-Hour and 8-Hour Ozone Extreme Area Plan Elements

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw a March 8, 2010 final action approving state implementation plan (SIP) revisions submitted by the State of California under the Clean Air Act (CAA) to provide for attainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley extreme ozone nonattainment area. This proposed action is in response to a decision issued by the U.S. Court of Appeals for the Ninth Circuit (*Sierra Club* v. *EPA,* 671 F.3d 955 (9th Cir. 2012)) remanding EPA's approval of these SIP revisions. In addition, EPA is proposing to withdraw our approval of a portion of a March 1, 2012 final rule approving SIP revisions submitted by California to provide for attainment of the 1997 8-hour ozone NAAQS in the San Joaquin Valley. The portion of this final action for which EPA is proposing to withdraw its approval addressed requirements regarding emissions growth caused by growth in vehicle miles traveled under the CAA. This proposed action is in response to a decision issued by the U.S. Court of Appeals for the Ninth Circuit (*Association of Irritated Residents,* 632 F.3d 584 (9th Cir. 2011), *as amended* Jan. 27, 2012), rejecting EPA's interpretation of the CAA, which had provided the basis for this portion of EPA's March 1, 2012 final rule.

DATES: Comments must be received on or before October 19, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0734, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *Email: wicher.frances@epa.gov.*
- *Mail or delivery:* Frances Wicher, (AIR–2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this proposed action is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–2), (415) 972–3957, *wicher.frances@epa.gov.*

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

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I. San Joaquin Valley 2004 1-Hour Ozone Plan

A. Background

On March 8, 2010, EPA fully approved state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the 1-hour ozone NAAQS in the San Joaquin Valley (SJV) extreme ozone nonattainment area. 75 FR 10420. The California Air Resources Board (CARB) had submitted these SIP revisions to satisfy the applicable requirements of part D, title I of the CAA following EPA's reclassification of the SJV area from severe to extreme nonattainment for the 1-hour ozone NAAQS effective May 17, 2004. 69 FR 20550 (April 16, 2004).[1] The SIP revisions that EPA approved consisted of the following four submissions: (1) The ''Extreme Ozone Attainment Demonstration Plan,'' adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) in October 2004 and submitted by CARB on November 15, 2004 (2004 SIP); (2) amendments to the 2004 SIP adopted by the District in October 2005 and submitted by CARB on March 6, 2006 to, among other things, amend the control strategy (2005 Amendments); (3) the ''Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan,'' adopted by the District in August 2008 and submitted by CARB on September 5, 2008 to provide updates to the 2004 SIP related to reasonably available control technology (RACT) measures adopted by the SJVUAPCD, the rate-of-progress (ROP) demonstration, and contingency measures (2008 Clarifications); and (4) relevant portions of the ''2003 State and Federal Strategy for the California State Implementation Plan,'' adopted by CARB in October 2003 and submitted to EPA on January 9, 2004 (2003 State Strategy), which identify CARB's regulatory agenda to reduce ozone and particulate matter in California and include statewide control measures applicable in the SJV. The 2003 State Strategy, as modified by CARB's resolution adopting it and CARB's resolution adopting the 2004 SIP, also includes State commitments to reduce emissions in the SJV area by specified amounts. The 2004 SIP relies in part on the 2003 State Strategy for the reductions needed to demonstrate attainment and ROP for the 1-hour ozone standard in the SJV area. *See* 75 FR 10420, 10421 (March 8, 2010).

These submittals, which we refer to collectively as the ''2004 1-Hour Ozone Plan'' or ''Plan,'' contained the following required elements of a 1-hour ozone plan for the SJV: (1) A rate of progress (ROP) demonstration as required by CAA sections 172(c)(2) and 182(c)(2); (2) ROP contingency measures as required by CAA sections 172(c)(9) and 182(c)(9); (3) an attainment demonstration as required by CAA sections 182(c)(2)(A) and 181(a); (4) attainment contingency measures as required by CAA section 172(c)(9); (5) a reasonably available control measures (RACM) demonstration as required by CAA section 172(c)(1); (6) provisions for clean fuels/clean technologies for boilers as required by CAA 182(e)(3); and (7) vehicle miles traveled (VMT) provisions as required by CAA section 182(d)(1)(A), including the requirement regarding transportation control strategies and transportation control measures sufficient to offset any growth in emissions from growth in VMT or numbers of vehicle trips in the SJV area (VMT emissions offset requirement).

The Sierra Club and several environmental groups filed a petition for review of EPA's March 8, 2010 approval of the 2004 1-Hour Ozone Plan, arguing, among other things, that EPA's action was arbitrary and capricious under the Administrative Procedure Act (APA) because it did not take into account new emissions inventory data that California had submitted subsequent to its submittal of the 2004 1-Hour Ozone Plan. On January 20, 2012, the U.S. Court of Appeals for the Ninth Circuit granted the petition with respect to this issue, holding that EPA's failure to consider the new emissions data rendered the Agency's action arbitrary and capricious under the APA and remanding EPA's action, in its entirety, for further proceedings consistent with the decision. *See Sierra Club, et. al.* v. *EPA,* 671 F.3d 955 (9th Cir. 2012) (*Sierra Club*). The court declined to reach the other issues raised in the petition for review.

B. EPA's Proposed Action

Consistent with the *Sierra Club* court's remand, EPA is proposing to withdraw its March 8, 2010 approval of the 2004 1-Hour Ozone Plan (75 FR 10420) in its entirety. This withdrawal, if finalized, would have the effect of removing the 2004 1-Hour Ozone Plan from the applicable California SIP and deleting the provisions in 40 CFR 52.220(c) where EPA's approval of the Plan is currently codified. *See* 40 CFR 52.220(c)(317)(i)(B)(*1*), (c)(339)(i)(B)(*1*) and (ii)(C), (c)(348)(i)(A)(*2*), and (c)(369)–(371). The District has stated its intent to withdraw the Plan from EPA's consideration following EPA's withdrawal of approval, and to submit a new 1-hour ozone plan to EPA by June 30, 2013. *See* letter dated July 10, 2012, from Seyed Sadredin, Executive Director/APCO, SJVUAPCD, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, Re: ''San Joaquin Valley 1-hour Ozone Plan.'' Consistent with these representations, we understand that California intends to promptly withdraw the 2004 1-Hour Ozone Plan from EPA's consideration if EPA finalizes today's proposal. Accordingly, EPA is not proposing additional action on the 2004 1-Hour Ozone Plan at this time.

As a consequence of EPA's reclassification of the SJV to extreme nonattainment for the 1-hour ozone standard in 2004, California was obligated to submit plan revisions for the SJV area meeting CAA and regulatory requirements for extreme 1-hour ozone nonattainment areas. Because California will be in default of these obligations should it withdraw the Plan from EPA's consideration, following such withdrawal EPA will promptly issue a finding of failure to submit pursuant to CAA section 179(a)(1), effective upon publication in the **Federal Register**. This finding would trigger mandatory sanctions under CAA section 179 unless the deficiency is corrected within 18 months of such finding and would also trigger an obligation on EPA to promulgate a Federal Implementation Plan (FIP) under CAA section 110(c) unless California submits and we approve SIP revisions that correct the deficiency within two years of such finding. Should California fail to promptly withdraw the 2004 1-Hour Ozone Plan upon finalization of today's proposal, EPA plans to commence a new rulemaking addressing the approvability of the 2004 1-Hour Ozone Plan.

If California withdraws the 2004 1-Hour Ozone Plan, the plan elements under subparts 1 and 2 of part D, title I of the CAA for which the State will no longer have a valid submission and thus would be required to submit for the 1-hour ozone NAAQS for the SJV area are as follows: (1) A ROP demonstration meeting the requirements of CAA sections 172(c)(2) and 182(c)(2); (2) ROP contingency measures meeting the requirements of CAA sections 172(c)(9) and 182(c)(9); (3) an attainment

[1] EPA established a new 8-hour ozone standard in 1997 (62 FR 38856 (July 18, 1997)) and subsequently revoked the 1-hour ozone standard effective June 15, 2005 in the SJV (40 CFR 50.9(b); 69 FR 23951 (April 30, 2004) and 70 FR 44470 (August 3, 2005)). However, the SJV area remains subject to certain CAA requirements for the 1-hour ozone standard through the anti-backsliding provisions in EPA's implementing regulations. *See* 40 CFR 51.905(a)(1) and 51.900(f).

demonstration meeting the requirements of CAA sections 182(c)(2)(A) and 172(a)(2); (4) attainment contingency measures meeting the requirements of CAA sections 172(c)(9); (5) a reasonably available control measures (RACM) demonstration meeting the requirements of CAA section 172(c)(1); (6) provisions satisfying the requirements for clean fuels/clean technologies for boilers in CAA 182(e)(3); and (7) provisions satisfying the vehicle miles traveled (VMT) provisions of CAA section 182(d)(1)(A), including the VMT emissions offset requirement. *See* 40 CFR 51.905(a)(1) and 51.900(f); *see also* 75 FR 10420, 10436–37.

II. VMT Emissions Offset Requirement for 1997 8-Hour Ozone Standard

A. Background

On March 1, 2012, EPA fully approved SIP revisions submitted by California to provide for attainment of the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area (2007 8-Hour Ozone Plan).[2] 77 FR 12652 (March 1, 2012). This final rule, which was signed by the Regional Administrator on December 15, 2011, included a determination that the 2007 8-Hour Ozone Plan satisfied the VMT emissions offset requirement in CAA section 182(d)(1)(A).[3] 77 FR at 12670. Although the 2007 8-Hour Ozone Plan does not contain a specific demonstration to address the VMT emissions offset requirement, EPA concluded, based on the Agency's then-current interpretation of CAA section 182(d)(1)(A), that California was not required to include additional transportation control strategies and transportation control measures to offset growth in emissions from growth in VMT in the SJV area for purposes of the 1997 8-hour ozone NAAQS because the 2007 8-Hour Ozone Plan demonstrated that both volatile organic compounds and nitrogen oxides emissions from on-road mobile sources declined steadily over the entire period covered by the plan. 76 FR 57846, 57863 (September 16, 2011) (proposed rule) and 77 FR 12652, at 12666 and 12670 (March 1, 2012) (final rule).[4]

As explained in EPA's proposed and final rules, in *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011) (*AIR*), the U.S. Court of Appeals for the Ninth Circuit held that CAA section 182(d)(1)(A) requires states to adopt, among other things, transportation control measures and strategies whenever, due to growth in VMT, vehicle emissions are projected to be higher than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing. 76 FR 57846, 57863 and 77 FR 12652 at fn. 4. At the time of signature of the final rule approving the 2007 8-Hour Ozone Plan, December 15, 2011, the court had not yet issued its mandate in the *AIR* case and EPA had not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing of the court's ruling on the VMT emissions offset requirement, pending a final decision by the court. *Id.* Accordingly, notwithstanding adverse comments on EPA's proposal with respect to this issue, EPA proceeded to fully approve the 2007 8-Hour Ozone Plan as satisfying the VMT emissions offset requirement in CAA section 182(d)(1)(A) on the basis of EPA's then-current interpretation of this requirement. On January 27, 2012, the U.S. Court of Appeals for the Ninth Circuit denied EPA's petition for rehearing in *AIR* and issued an amended opinion. The mandate issued on February 13, 2012. *See Association of Irritated Residents, et al.,* v. *EPA,* Nos. 09–71383 and 09–71404 (consolidated), 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012.

EPA's final rule approving the 2007 8-Hour Ozone Plan was published on March 1, 2012 (77 FR 12652). Shortly thereafter, several environmental and community groups filed a lawsuit in the Ninth Circuit challenging that approval. *Committee for a Better Arvin et al.* v. *EPA,* No. 12–71332.

B. EPA's Proposed Action

As noted above, the Ninth Circuit rejected EPA's prior interpretation of the VMT emissions offset requirement in section 182(d)(1)(A), under which we had allowed states to demonstrate compliance through submittal of aggregate motor vehicle emissions estimates showing year-over-year declines in such emissions. This interpretation formed the basis for EPA's determination that the 2007 8-Hour Ozone Plan satisfied the VMT emissions offset requirement. In response to the court's ruling in *AIR,* we are proposing to withdraw our March 1, 2012 determination that the 2007 8-Hour Ozone SIP satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) because it is predicated on an interpretation of section 182(d)(1)(A) that has been rejected by the Ninth Circuit. The 2007 8-Hour Ozone Plan fails to identify, compared to a baseline assuming no VMT growth, the level of increased emissions resulting solely from VMT growth and to show how such increased emissions have been offset through adoption and implementation of transportation control strategies and transportation control measures. This withdrawal would be limited to our conclusion with respect to the VMT emissions offset requirement and would not affect any other element of our March 1, 2012 action on the 2007 8-Hour Ozone SIP.

Because EPA's determination that the 2007 8-Hour Ozone SIP satisfied the VMT emissions offset requirement was made in the absence of any such demonstration submitted by the State, California will be in default of its obligation to submit a SIP revision satisfying this requirement if EPA finalizes the withdrawal of its determination that the obligation has been met. Therefore, simultaneously with a final action to withdraw our previous determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A), EPA intends to issue a finding that California has failed to submit a SIP revision to address this requirement, which would be effective upon publication in the **Federal Register.** This finding would trigger mandatory sanctions under CAA section 179 unless the deficiency is corrected within 18 months of such finding and would also trigger an obligation on EPA to promulgate a Federal Implementation Plan (FIP) under CAA section 110(c) unless California submits and we approve a SIP revision that corrects the

[2] For a more detailed description of this SIP, *see* 76 FR 57846, 57847 (September 16, 2011).

[3] Section 182(d)(1)(A) of the Act states as follows: Within 2 years after November 15, 1992, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or related emissions and congestion rather than reduce them.

[4] As explained in these rulemakings, EPA has historically interpreted CAA section 182(d)(1)(A) to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. *See* 57 FR 13498, at 13521–15323 (April 16, 1992).

deficiency within two years of such finding.

III. Public Comment

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the ''Date'' and ''Addresses'' sections at the beginning of this preamble.

IV. Statutory and Executive Order Reviews

This action merely proposes to withdraw previous EPA actions, or portions thereof, on SIP revisions submitted by California to provide for attainment of ozone standards in the San Joaquin Valley. As such it does not propose to impose additional requirements on any entity. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: August 30, 2012.

Jared Blumenfeld,

EPA Regional Administrator, Region 9.

[FR Doc. 2012–22971 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2011–011; FRL–9729–4]

RIN–2060–AQ84

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to list three substitutes for ozone-depleting substances in the fire suppression and explosion protection sector as acceptable subject to use restrictions under the EPA's Significant New Alternatives Policy (SNAP) program. This program implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ozone-depleting substances and find them acceptable where they pose comparable or lower overall risk to human health and the environment than other available substitutes. In the ''Rules and Regulations'' section of this **Federal Register**, we are listing three fire suppression substitutes as acceptable subject to use restrictions as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule; in such case, the final rule will become effective as provided in the accompanying direct final rule.

DATES: Comments must be received in writing or a request for a public hearing must be made as provided below by October 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0111, by mail to the following: ''OAR Docket and Information Center, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.'' Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.** To expedite review, a second copy of the comments should be sent to Bella Maranion at the address listed below under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9749; fax number: (202) 343–2363; email address: *maranion.bella@epa.gov.* The published versions of notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *http://www.epa.gov/ozone/snap/regs.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to list under SNAP certain substitutes for ozone-depleting substances for use in fire suppression applications. We have published a direct final rule listing three substitutes for ozone-depleting halons used in the fire suppression and explosion protection sector as acceptable subject to use restrictions in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

II. Does this action apply to me?

This proposed rule would regulate the use of Powdered Aerosol F (KSA®) and Powdered Aerosol G (Dry Sprinkler Powdered Aerosol (DSPA) Fixed Generators) by finding them acceptable subject to use conditions as substitutes for halon 1301 for use in total flooding fire suppression systems in normally unoccupied spaces. This action also proposes to find C7 Fluoroketone acceptable subject narrowed use limits as a substitute for halon 1211 for use as a streaming agent in portable fire extinguishers in nonresidential

applications. Halons are chemicals that were once widely used in the fire protection sector but have been banned from production in the U.S. since 1994 because their emissions into the atmosphere are highly destructive to the stratospheric ozone layer. This action will provide users that need specialized fire protection applications with more options for alternatives to the use of halons. Businesses that may be regulated, either through manufacturing, distribution, installation and servicing, or use of the fire suppression equipment containing the substitutes are listed in the table below:

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS Code	Description of regulated entities
Construction	238210	Alarm system (e.g., fire, burglar), electric, installation only.
Manufacturing	325998	Fire extinguisher chemical preparations manufacturing.
Manufacturing	332919	Nozzles, fire fighting, manufacturing.
Manufacturing	334290	Fire detection and alarm systems manufacturing.
Manufacturing	336611	Shipbuilding and repairing.
Manufacturing	339999	Fire extinguishers, portable, manufacturing.
Manufacturing	336411	Aircraft manufacturing.
Manufacturing	336413	Other aircraft parts and auxiliary equipment manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. What are the procedures for notice and comment on this rule?

The direct final rule will be effective on December 18, 2012 without further notice unless we receive adverse comment or a request for a public hearing by October 19, 2012. If EPA receives adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of this rule will not take effect. If a public hearing is requested, EPA will provide notice in the **Federal Register** as to the location, date, and time. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Bella Maranion in two versions: one clearly marked ''Public'' to be filed in the public docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only. For further information, please see the **ADDRESSES** section of this document.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

OMB notified EPA on May 5, 2011, that it considers this action not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and it is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rule is an Agency determination. It contains no new requirements for reporting or recordkeeping. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.08). The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.C.

C. Regulatory Flexibility Act (RFA)

The 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 statutes 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 impact of today's rule on small entities, small entities are defined as (1) a small business that produces or uses fire suppressants as total flooding and/or streaming agents with 500 or fewer employees or total annual receipts of $5 million or less; (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.

After considering the economic impacts of today's 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 proposed rule will not impose any requirements on small entities beyond current industry practices. Today's action effectively supports the introduction of new alternatives to the market for fire protection extinguishing systems, thus providing additional options for users making the transition away from ozone-depleting halons.

Use of halon 1301 total flooding systems and halon 1211 as a streaming agent have historically been in specialty fire protection applications including essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon system and extinguisher owners continue to maintain and refurbish existing systems and equipment since halon supplies continue to be available in the U.S. Owners of new facilities and purchasers of new fire suppression equipment make up the market for the new alternative agent systems and

equipment. They may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. Thus, EPA is providing more options to any entity, including small entities, by finding additional substitutes acceptable for use. The use restrictions imposed on the substitutes in today's rule are consistent with the applications suggested by the submitter and with current industry practices. Therefore, we conclude that the rule does not impose any new cost on businesses.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By introducing new substitutes, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the NFPA, which conducts regular outreach with small entities and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This 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. By introducing new fire suppression substitutes, today's rule provides an additional choice and flexibility to entities that are concerned with specialized fire protection applications. This proposed rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, so this action will not affect small governments.

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 rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require state, local, or tribal governments to change their regulations. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175. It 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. This proposed rule will provide additional options for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, and this rule does not require tribal governments to change their regulations. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in section II of the associated direct final rule.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to Powdered Aerosol F, Powdered Aerosol G (DSPA Fixed Generators), and C7 Fluoroketone.

H. Executive Order 13211 (Energy Effects)

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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 rulemaking does not involve technical standards. EPA defers to existing NFPA voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA refers users to the latest edition of NFPA 2010 Standard on Aerosol Extinguishing Systems which provides for safe use of aerosol extinguishing agents and technologies as well as NFPA 10 Standard for Portable Fire Extinguishers. Copies of these standards may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555. The NFPA 2010 and NFPA 10 standards meet the objectives of the rule by setting scientifically-based guidelines for safe exposure to halocarbon and inert gas agents and aerosol extinguishing agents as well as guidelines for portable extinguishers, respectively. In addition, EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule would provide fire suppression substitutes that have no ODP and low or no GWP. The avoided ODS and GWP emissions would assist in restoring the stratospheric ozone layer, avoiding adverse climate impacts, and result in human health and environmental benefits.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 11, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–23136 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2012–0077; 4500030115]

Endangered and Threatened Wildlife and Plants; 90-Day Findings on Petitions To Delist U.S. Captive Populations of the Scimitar-Horned Oryx, Dama Gazelle, and Addax

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition findings and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (''Service''), announce 90-day findings on two petitions to remove the U.S. captive-bred and U.S. captive populations of three antelope species, the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*), from the List of Endangered and Threatened Wildlife as determined under the Endangered Species Act of 1973, as amended (Act or ESA). Based on our review, we find that the petitions present substantial information indicating that delisting the U.S. captive animals or U.S. captive-bred members of these species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the U.S. captive members of these species to determine if delisting the U.S. captive specimens is warranted. Based on the status review, we will issue a 12-month finding on these two petitions, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: The findings announced in this document were made on September 19, 2012.

ADDRESSES: These findings are available on the Internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2012–0077. Supporting documentation we used in preparing these findings is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. Please submit any new information, materials, comments, or questions concerning these findings to the above street address.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On June 29, 2010, we received two petitions, one dated June 29, 2010, from Nancie Marzulla, submitted on behalf of the Exotic Wildlife Association (EWA), and one dated June 28, 2010, from Anna M. Seidman submitted on behalf of Safari Club International and Safari Club International Foundation (SCI). The SCI petitioner requested that the ''U.S. captive populations'' of three antelope species, the scimitar-horned oryx (*Oryx dammah*), dama gazelle (*Gazella dama*), and addax (*Addax nasomaculatus*), be removed from the Federal List of Endangered and Threatened Wildlife (List) under the Act. The SCI petitioner also requested that we ''correct the Endangered Species Act listing of scimitar-horned oryx, dama gazelle, and addax to specify that only the populations in the portion of their range outside of the United States are classified as endangered.'' The EWA petitioner requested that the ''U.S. captive-bred populations'' of these same three species be removed from the List. Both petitions indicated that removal or delisting of the U.S. captive or U.S. captive-bred individuals of these species was warranted pursuant to 50 CFR 424.11(d)(3) because the Service's interpretation of the original data that these species are endangered in their entirety was in error. EWA's petition contained an additional ground for recommending delisting of the ''U.S. captive-bred populations'' of these species on the basis that these ''populations'' have recovered pursuant to 50 CFR 424.11(d)(2). Both petitions clearly identified themselves as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a).

Previous Federal Action(s)

Two subspecies of the dama gazelle, the Mhorr gazelle (*Gazella dama mhorr*) and Rio de Oro dama gazelle (*G. d. lozanoi*) were listed as endangered in their entirety, i.e. wherever found, on June 2, 1970 (35 FR 8491). On November 5, 1991, we published in the **Federal Register** (56 FR 56491) a proposed rule to list the scimitar-horned oryx, addax, and dama gazelle as endangered in their entireties. We re-opened the comment period on the proposed rule to request information and comments from the public on June 8, 1992 (57 FR 24220), July 24, 2003 (68 FR 43706), and again on November 26, 2003 (68 FR 66395).

On February 1, 2005 (70 FR 5117), we announced a proposed rule and notice of availability of a draft environmental assessment to add new regulations under the Act to govern certain activities with U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle, should they become listed as endangered. The proposed rule covered U.S. captive-bred live animals, including embryos and gametes, and sport-hunted trophies, and would authorize, under certain conditions, certain otherwise prohibited activities that enhance the propagation or survival of the species. The ''otherwise prohibited activities'' were take; export or re-import; delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce, in the course of a commercial activity; or sale or offering for sale in interstate or foreign commerce. In the proposed rule, we found that the scimitar-horned oryx, addax, and dama gazelle are dependent on captive breeding and activities associated with captive breeding for their conservation, and that activities associated with captive breeding within the United States enhance the propagation or survival of these species. We accepted comments on this proposed rule until April 4, 2005.

On September 2, 2005, we published a final rule listing the scimitar-horned oryx, addax, and dama gazelle as endangered in their entirety (70 FR 52319). On September 2, 2005, we also added a new regulation (70 FR 52310) at 50 CFR 17.21(h) that excluded the U.S. captive-bred animals of these three species, as described above, from certain prohibitions under the Act. The promulgation of the regulation at 50 CFR 17.21(h) was challenged as violating section 10 of the Act and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), first in both the U.S. District Court for the Northern District of California and the U.S. District Court for the District of Columbia, but then transferred and consolidated in the U.S. District Court for the District of Columbia (*see Friends of Animals* v. *Ken Salazar* and *Cary* v. *Gould,* 626 F. Supp. 2d 102 (D.D.C. 2009)). The Court found that the rule for the three antelope species violated section 10(c) of the Act by not providing the public notice of and an opportunity to comment on activities being carried out with U.S. captive specimens of these three antelope species. On June 22, 2009, the Court remanded the rule to the Service for action consistent with its opinion. To comply with the Court's order, we published a proposed rule on July 7, 2011 (76 FR 39804), to remove the regulation at 50 CFR 17.21(h), thus eliminating the exclusion for U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions under the Act. Under the proposed rule, any person who intended to conduct an otherwise prohibited activity with U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle would need to qualify for an exemption or obtain authorization for such activity under the Act and applicable regulations. On January 5, 2012, we published a final rule (77 FR 431) removing the regulation at 50 CFR 17.21(h).

Species Information

The scimitar-horned oryx, dama gazelle, and addax are each native to several countries in northern Africa. Although previously widespread in the region, populations have been greatly reduced primarily as a result of habitat loss, uncontrolled killing, and the inadequacy of regulatory mechanisms (70 FR 52319). Estimated numbers of individuals in the wild are extremely low. The oryx is believed to be extirpated in the wild, the addax numbers fewer than 300, and the dama gazelle numbers fewer than 500. All three species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The International Union for Conservation of Nature (IUCN) Red List categorizes the oryx as ''extinct in the wild,'' and the dama gazelle and addax as ''critically endangered'' (IUCN Species Survival Commission (SSC) Antelope Specialist Group 2008; Newby and Wacher 2008 in IUCN Redlist 2012; Newby *et al.* 2008 in IUCN Redlist 2012). All three species are listed under the Act as endangered in their entireties (see 50 CFR 17.11(h)).

The Sahara Sahel Interest Group (SSIG) estimates that there are approximately 4,000 to 5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle in captivity worldwide (70 FR 52319). These include at least 1,550 scimitar-horned oryx and 600 addax held in managed breeding programs in several countries around the world. We are unaware of information indicating numbers of dama gazelle currently held in managed breeding programs. In addition to individuals of these species held in managed breeding programs, captive individuals are held in private collections and on private game farms and ranches in the United States and the Middle East (IUCN SSC Antelope Specialist Group 2008; Newby and Wacher 2008 in IUCN Redlist 2012; Newby *et al.* 2008 in IUCN Redlist 2012; 70 FR 52310).

As part of planned reintroduction projects, captive-bred individuals of the three antelope species have been released into fenced, protected areas in Tunisia, Morocco, and Senegal. These animals may be released into the wild when adequately protected habitat is available. However, continued habitat loss and wanton killing have made reintroduction nonviable in most cases (70 FR 52319).

For more information on the scimitar-horned oryx, dama gazelle, and addax, see our final listing rule for these species (70 FR 52319; September 2, 2005).

Standards for Evaluating Information in the Petitions

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR Part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in delisting a species as they relate to the definitions of endangered and threatened species. We may delist a species according to 50 CFR 424.11(d) only if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The best scientific or commercial data available at the time the species was classified, or the interpretation of such data, were in error.

In considering a petition under section 4(b)(3) of the Act, we generally evaluate the information presented in the petition, along with information available in our files, on threats to the species. But in this instance, first we must evaluate whether SCI and EWA have submitted valid petitions to add, remove, or reclassify a ''species'' as that term is defined in the Act. Our evaluation is presented below.

Evaluation of the Information in the SCI and EWA Petitions

As previously mentioned, SCI requests delisting of the ''U.S. captive populations'' of the three antelope species based on the assertion that the Service committed ''errors'' in the interpretation of the best scientific and commercial data available at the time of the 2005 determination to list the scimitar-horned oryx, dama gazelle, and addax as endangered in their entirety. SCI also requests that we ''correct the Endangered Species Act listing of scimitar-horned oryx, dama gazelle, and addax to specify that only the populations in the portion of their range outside of the United States are classified as endangered.'' EWA requests delisting of the U.S. captive-bred populations of the three antelope species on the basis that the Service's interpretation of the original data for the listings was also in error, and in addition asserts that captive-bred animals of the three species that are held in the United States are recovered.

Essentially, both petitioners request separate designation, or legal status, under the Act for captive animals held within the United States from that of members of the same taxonomic species located in the wild or held in captivity elsewhere around the world.

The Service completed its listing determination for the three antelope species in 2005. In that rulemaking process, the Service found that a differentiation in the listing status of captive U.S. specimens of these antelopes was not appropriate (70 FR 52319). While the Service does not have an absolute policy or practice with respect to whether it can differentiate the listing status of captive and wild specimens of the same species, we generally have included wild and captive animals together when listing species. Nevertheless, petitioners assert that the treatment by the Service of chimpanzees in 1992 warrants similar treatment now for these antelope species. In that 1992 rulemaking, the Service uplisted chimpanzees in the wild to endangered, while retaining the prior status of threatened for those in captivity. That 1992 action preceded the adoption by the Service and the National Marine Fisheries Service of the Distinct Population Segment (DPS) Policy (61 FR 4722, February 7, 1996) and case law that has developed under the DPS Policy, such as the decision in *Alsea Valley* v. *Evans* (161F. Supp. 2d 1154 (D.OR)). Nonetheless, because the Service has no absolute policy or practice as to whether it can differentiate the listing status of wild and captive specimens of the same species, a reasonable person could conclude that the petitioned action may be warranted.

Finding

We find that the two petitions contain substantial information that the petitioned action may be warranted. It is important to note that the ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the captive antelopes covered by these petitions, which is conducted following a 90-day finding that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (''substantial 90-day finding''). Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will conclude that the Service has the discretion to treat such specimens differently, or that the petitioned action is warranted. It does, however, mean that the Service will be able to consider this question in more depth and detail. In addition, the Service will be able to consider the question of the appropriate status of U.S. captive members of the three antelope species at the same time as it considers the status of captive chimpanzees in completing a separate 12-month finding on a petition to eliminate the separate ESA classification of captive and wild chimpanzees. The substantial 90-day finding on the chimpanzee petition was published September 1, 2011 (76 FR 54423), and a document to reopen the comment period was published November 1, 2011 (76 FR 67401).

With this substantial 90-day finding, we are initiating a rangewide status review of the captive antelopes covered by the petitions, and, once it is completed, we will make a finding on whether delisting the U.S. captive specimens of any of these species is warranted. This finding fulfills any obligation under 16 U.S.C. 1533(b)(3)(A) and the regulations at 50 CFR 424.14(b).

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff of the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–23019 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120425420–2420–01]

RIN 0648–BB92

Fisheries of the United States; National Standard 1 Guidelines; Reopening of Public Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; reopening of public comment period.

SUMMARY: NMFS is reopening the comment period on the Advance Notice of Proposed Rulemaking (ANPR) published on May 3, 2012, on potential adjustments to the National Standard 1 Guidelines, one of 10 national standards for fishery conservation and management contained in Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act. The current comment period is scheduled to end on September 15, 2012. Because of the importance of NS1 to U.S. fishery management and the complexity of the issues, NMFS feels reopening the comment period will provide for a fuller range of public input on the NS1 Guideline issues. The comment period will close on October 12, 2012.

DATES: The comment period for the ANPR was published on May 3, 2012 (77 FR 26238), and closed on September 15, 2012. The comment period will reopen on September 16, 2012, and remain open through October 12, 2012.

ADDRESSES: You may submit comments on the referenced ANPR, identified by ''NOAA–NMFS–2012–0059'', by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2012–0059'' in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• Fax: 301–713–1193, Attn: Wesley Patrick.

• Mail: Wesley Patrick; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13436; Silver Spring, MD 20910.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to another address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Wesley Patrick, Fisheries Policy Analyst, National Marine Fisheries Service, 301–427–8566.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2012, NMFS published an ANPR (77 FR 26238) to provide background information and to request public comment on potential adjustments to the National Standard 1 Guidelines. The ANPR provides the public with a formal opportunity to comment on the specific ideas mentioned in the ANPR, as well as any additional ideas and solutions that could improve provisions of the National Standard 1 Guidelines.

The comment period on the ANPR was originally scheduled to close on August 1, 2012. NMFS received a request from the Western Pacific Regional Fishery Management Council on behalf of all eight regional councils, to extend the comment period on the ANPR to September 15, 2012. On July 3, 2012, NMFS published a **Federal Register** notice extending the comment period to September 15, 2012 (77 FR 39459). Because of the importance of NS1 to U.S. fishery management and the complexity of the issues, NMFS feels reopening the comment period will provide for a fuller range of public input on the NS1 Guideline issues. NMFS is reopening the comment period and establishing a comment period end date of October 12, 2012.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 14, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs.

[FR Doc. 2012–23151 Filed 9–14–12; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 182
Wednesday, September 19, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 13, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: Importation of Live Poultry, Poultry Meat, and Other Poultry Products from Specified Regions.

OMB Control Number: 0579–0228.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. Veterinary Services of the USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent the introduction of animal diseases into the United States. The regulations in 9 CFR Part 94 allow the importation of poultry meat and products and live poultry from Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan under certain conditions. APHIS will collect information through the use of a health certification statement that must be completed by Mexican veterinary authorities prior to export and three APHIS forms VS 17–129, VS 17–29, and VS 17–30.

Need and Use of the Information: The information collected from the health certificate and forms will provide APHIS with critical information concerning the origin and history of the items destined for importation in the United States. Without the information APHIS would be unable to establish an effective defense against the incursion of HPAI and END from poultry and poultry products imported from Argentina and certain Mexican States.

Description of Respondents: Federal Government; Business or other for-profit.

Number of Respondents: 21.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 212.

Title: Importation of Shelled Peas from Kenya.

OMB Control Number: 0579–0302.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 et seq.), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) fruits and vegetables regulations allows the importation of shelled garden peas from Kenya into the continental United States while continuing to protect against the introduction of quarantined peas.

Need and Use of the Information: APHIS requires that some plants or plant products be accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. This information is used as a guide to the intensity of the inspection APHIS conducts when the shipment arrives. Without the information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time. This would slow the clearance of international shipments.

Description of Respondents: Federal Government.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.

Title: Importation of Wooden Handicrafts from China.

OMB Control Number: 0579–0357.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 et seq.), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. APHIS' regulations provide for the importation of wooden handicrafts from China under certain conditions. Trade in these handicrafts has resumed while continuing to protect the United States against the introduction of plant pests.

Need and Use of the Information: APHIS requires that all wooden handicrafts must be labeled with a merchandise tag containing the identity the product manufacturer. The identification tag serves as means for APHIS to track shipments should a recall be required. Failure to collect this information would cause foreign countries to refuse any shipments from the United States that contained wooden handcrafts.

Description of Respondents: Business or other for-profit.

Number of Respondents: 140.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 630.

Title: Importation of Papaya from Colombia and Ecuador.

OMB Control Number: 0579–0358.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 et seq.), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The Animal and Plant Health Inspection Service (APHIS) amended the regulations to allow, under certain condition, the importation of commercial shipments of fresh papaya from Colombia and Ecuador in the continental United States.

Need and Use of the Information: APHIS requires that all consignments of papaya from Colombia and Ecuador would have to be accompanied by a phytosanitary certificate by the National Plant Protection Organization of the exporting country stating that the papayas were grown, packed, and shipped in accordance with the proposed requirements.

Description of Respondents: Federal Government.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 151.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–23000 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 13, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Community Eligibility Option Evaluation.

OMB Control Number: 0584–NEW.

Summary of Collection: Section 104(a) of the Healthy, Hunger Free Kids Act of 2010 provides the Community Eligibility Option (the CE Option) for Local Educational Authorities (LEAs) and schools, as an alternative to household applications for Free or Reduced Price meals. Under the CE Option, families are not required to submit application for free or reduced-price meals, and schools are required to provide free meals to all students. The potential benefits are that more students participate, meals are more nutritious, and LEAs may experience reductions in administrative burden and errors. In order to understand how the CE Option is implemented, incentives and barriers for LEAs and schools, as well as the impacts on LEAs, schools and children, Congress has mandated that the Food and Nutrition Service (FNS) conduct an evaluation of the CE Option.

Need and Use of the Information: FNS will collection information from the study: To estimate the number of eligible LEAs and schools that do not choose the CE Options; To assess the barriers to participation in the CE Option in non-participating but eligible LEAs and schools; To describe the LEAs and schools participating in the CE Option; To examine the impacts of the CE Option on (1) Program integrity, (2) availability of School Breakfast program, (3) nutritional quality of meals, (4) program participation by students, (5) program administration, (6) foodservice revenues and costs; and To provide input to FNS deliberations about the key parameters for the CE Option: The multiplier for determining the percentage of meals reimbursed at the free rate and the threshold value of the ISP for determining eligibility to implement the option.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 3,574.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,383.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–23016 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0024]

Availability of FSIS Salmonella Compliance Guidelines for Small and Very Small Meat and Poultry Establishments That Produce Ready-to-Eat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of a revised compliance guide for small and very small meat and poultry establishments on the safe production of ready-to-eat (RTE) meat and poultry products with respect to *Salmonella* and other pathogens. FSIS has posted this compliance guide on its Significant Guidance Documents Web page (*http://www.fsis.usda.gov/Significant_Guidance/index.asp).* FSIS encourages small and very small meat and poultry establishments that manufacture these products to avail themselves of this guidance document.

DATES: *Effective date:* September 19, 2012.

ADDRESSES: A downloadable version of the revised compliance guide is available to view and print at *http://www.fsis.usda.gov/*

Significant_Guidance/index.asp). No hard copies of the compliance guide have been published.

FOR FURTHER INFORMATION CONTACT:

Kristina Barlow, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW., Mailstop 3782, Washington, DC 20250; email: *kristina.barlow@fsis.usda.gov*; or phone: (202) 690–7739.

SUPPLEMENTARY INFORMATION:

I. Background

In April, 2011, FSIS announced the availability of a compliance guideline for small and very small meat and poultry establishments on the safe production of RTE products (76 FR 22667). FSIS also solicited comments on the guidance at that time. In response to comments received, FSIS has updated the guidance document to provide more options for achieving lethality in RTE meat and poultry products and to clarify issues. FSIS has also added an appendix to the document.

The ''FSIS *Salmonella* Compliance Guidelines for Small and Very Small Meat and Poultry Establishments that Produce Ready-to-Eat Products'' provides meat and poultry establishments that manufacture RTE meat and poultry products with information on regulatory requirements associated with the safe production of these products particularly with respect to *Salmonella* and other pathogens. This document also provides information about the processing and safe handling of RTE products after the lethality step, so that they are not contaminated with pathogens such as *Salmonella* or *Listeria monocytogenes* (*Lm*). Though Agency guidance documents are recommendations rather than regulatory requirements and are revised as new information becomes available, FSIS encourages meat and poultry establishments to follow this guidance.

II. Comments and Responses

FSIS received two comment letters in response to the *Salmonella* Compliance Guidelines for Small and Very Small Meat and Poultry Establishments that Produce RTE Products (RTE *Salmonella* guidelines). Both letters were from national trade associations representing the interests of primarily small and very small meat packers and processors.

Following is a discussion of these comments and FSIS's responses.

A. Agency Focus on Small and Very Small Establishments

Comment: Both commenters questioned why the RTE *Salmonella* guidelines focused on small and very small establishments.

According to one commenter, small and very small meat processors in the U.S. represent 5 percent of the total meat production volume, but 95 percent of the total meat processing businesses in the U.S. This commenter suggested that the guidelines not be limited to small and very small establishments but rather should be addressed to the whole industry.

Response: FSIS focused the RTE *Salmonella* Guidelines on small and very small establishments in support of the Small Business Administration's initiative to provide small and very small establishments with compliance assistance. It is important that small and very small establishments have access to a full range of scientific and technical support, and the assistance needed to establish safe and effective HACCP systems. Although large establishments can benefit from the guidance that FSIS provides, focusing the guidance on the needs of small and very small establishments provides them with information that may be otherwise unavailable to them.

B. Request for Clarification on Alternative Processing Options

Comment: One commenter stated that, in reality, most meat processors lack the technology to address or monitor specific aspects of Appendix A (64 FR 732; Jan. 6, 1999, at 746) and believes that the guidance document fails to adequately present alternative processing options.

This commenter requested clarification about FSIS's expectations related to the application of the parameters outlined in Appendix A (specifically, relative humidity and dwell time) to all RTE products—not just cooked, roasted, and corned beef products.

In addition, both commenters strongly encouraged FSIS to fund research that would update existing Agency resources to reflect modern processing practices.

Response: Although this comment is outside the scope of this guidance document, FSIS plans to revise Appendices A and B (64 FR 732; Jan. 6, 1999, at 748) as part of its efforts to revise guidance materials for RTE products. The Agency plans to provide clarification of its expectations with respect to dwell time and humidity as part of this revision. FSIS has also recently issued ''FSIS Compliance Guideline for Meat and Poultry Jerky Products by Small and Very Small Establishments,'' which provides more flexible options for achieving humidity in RTE products.

C. Demonstrating Adequate Support

Comment: One commenter stated that although many of the items in the RTE *Salmonella* Compliance Guidelines are especially useful to industry, a 5-$\log_{10}$ reduction of *Salmonella* in finished product will be hard to demonstrate for a plethora of products, including low-temperature fermented products and non-fermented products. The commenter said that if small and very small establishments are able to demonstrate adequate support for using a science-based approach, the Agency should view the product as scientifically safe and wholesome, regardless of whether the 5-$\log_{10}$ reduction is achieved. The commenter encouraged FSIS, in consultation with ARS, to develop more resources, along the lines of safe harbors, for small and very small establishments to use as support for the processing of non-heat treated RTE products.

Response: FSIS recognizes that a 5-$\log_{10}$ reduction of *Salmonella* in finished product may be hard to demonstrate for some products. To address this difficulty, the guidance provides establishments with alternative lethality approaches within the guidelines, including utilizing good manufacturing practices and incoming product testing to support the safety of lower levels of lethality. In addition, FSIS intends to develop further guidance that establishments can use to achieve lethality in specific RTE meat and poultry products.

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Done at Washington, DC, on: September 13, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–23080 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0020]

Risk-Based Sampling of Beef Manufacturing Trimmings for Escherichia coli (E. coli) O157:H7 and Plans for Beef Baseline

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice; Request for comments.

SUMMARY: FSIS is announcing its intention to redesign its *E. coli* O157:H7 verification testing program for beef manufacturing trimmings to make the program more risk-based and to enable the Agency to calculate on-going statistical prevalence estimates for *E. coli* O157:H7 in raw beef manufacturing trimmings. This notice also discusses FSIS's plans to perform a beef carcass baseline. FSIS seeks public comment on its plans, which have been developed in response to a 2011 audit by the U.S. Department of Agriculture's Office of Inspector General (OIG) of FSIS's protocol for N–60 sampling of beef manufacturing trimmings for *E. coli* O157:H7. This notice also announces changes that FSIS has made to its beef manufacturing trimmings program to increase both the collection rate and the likelihood that FSIS will find positive samples. Finally, this notice summarizes a 2012 OIG report and the actions that FSIS has taken to address the recommendations in that report.

DATES: Comments on this notice must be submitted on or before November 19, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, OPPD, RIMD, Docket Clearance Unit, Patriots Plaza III, 1400 Independence Avenue SW., 8–163A, Mailstop 3287, Washington, DC 20024–3221.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Acting Assistant Administrator for the Office of Policy and Program Development, FSIS, USDA, Room 351–E, Jamie Whitten Building, 14th and Independence Avenue SW., Washington, DC 20250–3700; telephone (202) 720–0399, fax (202) 720–2025; *rachel.edelstein@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1994, FSIS determined that *E. coli* O157:H7 adulterates raw ground beef product within the meaning of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(1)). FSIS began testing ground beef for *E. coli* O157:H7 in 1994. In 1999, FSIS determined that, besides ground beef, *E. coli* O157:H7 adulterated all non-intact raw beef product and intact raw beef product intended for use in raw, non-intact beef product (64 FR 2803; Jan. 19, 1999).

Starting in 2007, FSIS began testing beef manufacturing trimmings and other raw ground beef components (raw esophagus (weasand) meat, head meat, cheek meat, beef from advanced meat recovery systems, low temperature rendered lean finely textured beef, partially defatted chopped beef, partially defatted beef fatty tissue, and heart meat) for *E. coli* O157:H7 at the originating slaughter establishment. FSIS also began verifying that grinders, fabricators, and supplying slaughter establishments had effective controls for *E. coli* O157:H7.

FSIS sampled beef manufacturing trimmings under a simple random sampling plan in which each slaughter establishment had an equal chance of being scheduled for sampling, regardless of production volume or previous history. FSIS collects approximately 1,300 samples per year. From calendar year 2007 through June 2011, FSIS found an average of about seven *E. coli* positives per year, resulting in an average *E. coli*-positive rate of about 0.60% in beef manufacturing trimmings during this period. Each slaughter establishment producing beef manufacturing trimmings was sampled about 3.5 times per year.

Inspection personnel collect beef trimmings samples for testing using N–60 procedures. Under these procedures, inspection personnel collect 60 slices of beef manufacturing trimmings cut to a specific size and also collect an additional, separate ''grab sample'' of smaller pieces of trim from the same production lot. FSIS laboratories use the 60 slices for the first part of the analysis for *E. coli* O157:H7. If the 60 slices are confirmed positive, laboratory personnel do quantitative (most probable number or MPN) analysis on the ''grab'' sample.[1]

When an FSIS beef manufacturing trimming sample tests positive, FSIS takes a number of steps including: Collecting follow-up samples at the establishment where the positive sample was found; documenting production of adulterated product in a noncompliance record when appropriate; conducting a food safety assessment (FSA) (a comprehensive review of the establishment's food safety

[1] FSIS's *E. coli* O157:H7 test results are reported on the Agency's Web site at: *http://www.fsis.usda.gov/Science/Ecoli_Raw_Beef_Testing_Data_YTD/index.asp* (accessed June 20, 2012).

system); and verifying that the establishment accurately executed all steps in its Hazard Analysis and Critical Control Point (HACCP) plan for production of trim and implemented appropriate corrective actions.

OIG Audit

OIG audited the efficacy of FSIS testing for *E. coli* O157:H7 in beef manufacturing trimmings in 2010 and reported the audit results in February 2011.[2] On the basis of its audit, OIG recommended that FSIS:

(1) Develop a plan to perform baseline studies of beef manufacturing trimmings and ground beef to determine the estimated prevalence rate of *E. coli* O157:H7 for the purpose of redesigning FSIS's verification testing program. The report also recommended that the plan prescribe how often that initial prevalence estimate should be reassessed.

(2) Re-evaluate sample parameters (size and confidence level) to provide a higher confidence level for FSIS' ability to detect contaminated product and to more effectively verify process controls at beef slaughter establishments.

(3) Document the scientific support and rationale for the revised verification testing program design, including the contamination level that will be associated with the new sample parameters, and how the estimated prevalence rate has informed the redesigned verification testing program. Publish in the **Federal Register** FSIS's revised beef testing verification program and solicit public comment.

(4) Focus *E. coli* O157:H7 sampling and testing resources at establishments that are likely to be of higher risk, and consider the use of specialized sample collection teams.

In response to the first recommendation, FSIS plans to make changes in its *E. coli* O157:H7 verification testing programs for beef manufacturing trimmings and ground beef to calculate prevalence of the pathogen in these products. FSIS conducted an evaluation of the Agency's current sampling programs to determine whether they provide sufficient data to calculate prevalence estimates for pathogens in FSIS regulated product: *http://www.fsis.usda.gov/PDF/Prevalence_Estimates_Report.pdf.* FSIS is also considering implementing similar sampling designs in its programs for bench trim and other components, so that they are consistent with the sampling designs for ground beef and beef manufacturing trimmings. Should the Agency adopt and implement these changes, it will endeavor to generate statistical prevalence estimates in ground beef and beef manufacturing trimmings. Prevalence estimation in bench trim and other components may not be possible because of limited sampling resources and data concerns.

In 2013, FSIS intends to initiate a beef carcass baseline survey to determine the presence and levels of the pathogenic *E. coli,* including O157:H7 and the six non-O157 Shiga toxin-producing *E. coli* (STEC) most commonly associated with illness in the United States; *Salmonella* species; and certain indicator organisms. As the Agency does with other baseline studies, FSIS will make the study design and sampling plans available on its Web site and will solicit comments on the study design and sampling plans before carrying out the study. In this survey, FSIS plans to collect samples from beef carcasses immediately after de-hiding and before evisceration in order to identify the type and level of contamination before antimicrobial interventions are applied to the carcass. FSIS may also collect samples from carcasses slaughtered that same day, pre- and post-chill.

As the Agency has done with previous baseline surveys, FSIS will report the results of this survey on its Web site and incorporate them into compliance guidance for industry to use in assessing individual establishment performance against the national performance. Controls to reduce the risk of enteric pathogen contamination at slaughter are crucial. Under 9 CFR 310.18(a), establishments must handle beef carcasses, organs, and other parts in a sanitary manner to prevent contamination with fecal material, urine, bile, hair, dirt, or foreign matter. Because these sources of contamination, whether visible or not, may contain pathogens, a principal objective of proper sanitary dressing and process control procedures is to reduce the potential for exposure of carcasses and parts to any contamination or food safety hazard during the removal of the hide, feet, head, gastrointestinal tract, and other internal organs. If establishments implement effective controls during sanitary dressing procedures, it is likely that it will prevent or reduce contamination significantly. This survey will be important to the Agency in assessing the prevalence of the load of pathogens and certain indicator organisms on carcasses throughout the slaughter process. In addition to informing the future Agency compliance guidance, FSIS will also use the baseline survey results to make changes to its sampling, testing, and other verification activities.

In response to OIG recommendation #2, FSIS decided to revise the N–60 program to provide for more frequent sampling at establishments that the Agency determines have problems controlling *E. coli* O157:H7 in beef manufacturing trimmings. In changing the N–60 program, FSIS considered sanitary dressing verification data, product traceback activities, and other inspection and data collection activities. The paper discussing this analysis is posted with this notice as a related document at (*http://www.fsis.usda.gov/PDF/Redesign_Beef_Trim_Sampling_Methodology.pdf).* In the analysis, FSIS examined *E. coli* O157:H7 test results as a function of beef manufacturing trimmings volume class from calendar year 2007 through June 2011. Establishments that produce beef manufacturing trimmings are grouped in four volume classes: Very small, producing less than 1001 pounds per day; small, 1001 to 50,000 pounds per day; medium, 50,001 to 250,000 pounds per day; and large, more than 250,000 pounds per day. FSIS found that the large-volume establishment class (total volume CY 2007–2011: 13,500,000,000 pounds) has the lowest *E. coli* O157:H7 percent positive, while the small-volume class (total volume CY 2007–2011: 1,268,625,000 pounds) has the highest *E. coli* O157:H7 percent positive. The analysis found that sampling in the small volume class is twice as likely to yield an *E. coli* O157:H7-positive result as sampling in large volume establishments. FSIS found that sampling volume classes in proportion to the percent positive in the volume class is approximately 2 times as likely to yield an *E. coli* O157:H7-positive test result as is sampling under the simple random sampling program.

FSIS also found that the percent-positive rate in the high-prevalence season (now considered to be May through October, rather than April through September, on the basis of FSIS data) is about 2 times as high as it is the rest of the year. Accordingly, the analysis concluded that increasing the sampling of beef manufacturing trimmings during May through October should increase the probability of detecting *E. coli* O157:H7 positives.

FSIS determined that there are about 480 slaughter establishments in the beef manufacturing trimmings sampling frame that are eligible for sampling. FSIS selects between 200 and 250 establishments from the frame every month for sampling. Annually, FSIS

[2] U.S. Department of Agriculture, Office of Inspector General. February 2011. FSIS Sampling Protocol for Testing Beef Trim for *E. coli* O157:H7. Audit Report 24601–9–KC. Washington, DC. See this report at: *http://www.usda.gov/oig/webdocs/24601-9-KC.pdf* (accessed June 20, 2012).

distributes approximately 2,600 sample forms to its personnel. However, in FY 2010, only 1,274 samples were successfully collected, a response rate of about 49 percent. One reason a sample request may not result in successful sample collection is that a sample may be taken but discarded because of, for example, late sample delivery to the laboratory or container leakage. Additionally, if establishments were not producing the product during the 30-day sample-collection period, FSIS field personnel were not able to collect the sample. To address the low collection rate that results when establishments are not producing the product at the time of sample collection, FSIS increased its sample collection window from 30 days to 60 days and has overscheduled sampling to adjust for non-response. The goal of these changes is to ensure that all 2,600 samples are collected.

Based upon the results of its analysis, FSIS has already redesigned its *E. coli* O157:H7 testing program for beef manufacturing trimmings so that sampling is weighted by production volume and volume class-specific risk factors. FSIS will ensure that each slaughter establishment producing beef manufacturing trimmings is sampled at least once per year. FSIS also increased sampling during the high prevalence season (May through October in the United States) by up to 20 percent. Because of resource constraints, however, increased sampling during the high-prevalence season will require a decrease in sampling during the low prevalence season.

FSIS will take measures to increase the number of samples that the Agency successfully collects. As stated above, FSIS has already increased the time during which field personnel may collect a sample from 30 days to 60 days. This increase allows field personnel additional time to collect samples for testing in establishments that infrequently produce manufacturing trimmings. FSIS also plans to over-schedule the sampling to increase the total number of samples actually collected. On the basis of the changes FSIS has made to its N–60 program to date, FSIS estimates that the probability of obtaining *E. coli* O157:H7-positive results in beef manufacturing trimmings during FSIS verification testing will increase by a factor of about 2.5.

FSIS does not plan to increase the annual statistical sample size but will redistribute the samples on the basis of an analysis of the Agency's sampling program for beef manufacturing trimmings. The changes to the sampling program, however, may increase the number of follow-up samples collected as a consequence of finding more *E. coli* O157:H7-positive samples. FSIS is also considering changes to its sampling programs for bench trim and other raw ground beef components. The changes are likely to be similar to those discussed above in its beef manufacturing trimmings program.

In its response to OIG, FSIS suggested that sanitary dressing noncompliances may be related to *E. coli* O157:H7-positive results in beef trim because carcass contamination is the primary cause of ground beef component adulteration with the pathogen. FSIS reviewed and evaluated the sanitary dressing procedure noncompliance records for slaughter establishments that produce beef manufacturing trimmings found to have tested positive. The Agency concluded that it did not appear that the rate of sanitary dressing procedure noncompliances could be used to identify establishments that have a higher probability of having an *E. coli* O157:H7-positive test result.

In November 2011, FSIS revised its sanitary dressing verification directive (FSIS Directive 6410.1) to improve and clarify for FSIS inspectors the procedures that they are to follow in verifying sanitary dressing compliance. This revision and the expected improvement in inspector verification of sanitary dressing procedures may result in a higher correlation between sanitary dressing noncompliances and *E. coli* O157:H7 positives in beef trim. FSIS intends to perform analyses of verification sampling results to determine whether the correlations have changed.

As is discussed above, in responding to an Agency *E. coli* O157:H7-positive finding in beef manufacturing trimmings, FSIS collects multiple follow-up samples and conducts verification activities at the originating slaughter establishment. FSIS intends to implement new traceback procedures at beef manufacturing trimming suppliers that provided source materials for ground product or bench trim (that is, trim derived from beef at an establishment other than the originating slaughter establishment) that FSIS finds positive.[3] When FSIS implements these new traceback procedures, the Agency expects that the data gathered will enable it to better target sampling at slaughter establishments.

OIG recommended that FSIS re-evaluate sample parameters (size and confidence level). Sample size calculations were not performed as part of the statistical assessment in order to stay resource neutral. FSIS intends to evaluate the allocation of sampling resources within the *E. coli* O157:H7 sampling program to estimate prevalence.

Additionally, FSIS intends to better identify establishments likely to have problems with *E. coli* O157:H7 through analysis of data collected through sanitary dressing verification, new product traceback activities, Public Health Information System (PHIS) data (including any relevant data available through the Hazard Analysis Verification procedure and establishment profile), and other inspection and data collection activities. Because *E. coli* O157:H7 and the other STECs are enteric pathogens, analysis of FSIS sanitary dressing verification data may help the Agency to identify establishments that should be sampled more frequently for the pathogens. PHIS and hazard analysis verification (HAV) procedures will likely allow FSIS to gather more information on establishment-specific controls and how effective they are. Again, FSIS hopes to use this data to identify establishments that should be sampled more frequently for these pathogens.

As the Agency announced in the September 11, 2011, notice on non-O157 STEC (76 FR 58157), FSIS is also planning to conduct a survey, using its employees that are assigned to beef slaughter and processing establishments, to gather information on establishment controls for STECs in beef. This survey will be similar to a previous ''65–07 Checklist'' survey.[4] The results of the survey will provide FSIS with information regarding establishment practices that the Agency may be able to use to further develop risk-based sampling in the future. FSIS plans also to conduct risk analyses, as appropriate, to determine the relative impact of various establishment factors on the probability of *E. coli* O157:H7 contamination and subsequent illnesses, hospitalizations, and deaths. FSIS intends to use the data generated by the actions listed above to assess and evaluate its *E. coli* O157:H7 beef manufacturing trimmings sampling program and make risk-based changes as appropriate.

OIG recommended, and FSIS considered, the use of specialized

[3] See the FR notice on traceback (77 FR 26725; May 7, 2012) at: *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp* (accessed June 20, 2012).

[4] Available at *http://www.fsis.usda.gov/PDF/Ecoli_Reassement_&_Checklist.pdf* (accessed June 20, 2012).

sample collection teams for collecting N–60 samples in establishments. FSIS has concluded that the Agency does not have the resources to implement this recommendation. The use of the specialized sample collection teams would be cost-prohibitive.

2012 OIG Audit Report

In a more recent audit, reported in May 2012, OIG studied the variation of the beef industry's *E. coli* O157:H7 sampling and testing protocols among slaughter plants, and how FSIS and the beef industry use the test results to improve food safety.[5] OIG found that the beef industry was conducting thousands of tests daily and generally complying with FSIS's guidance for how to perform those tests.

OIG made several additional recommendations to FSIS, and the Agency has already responded to some of them. For example, OIG recommended that FSIS issue guidance for industry on sampling and how the industry might plan for and react to high-event periods (HEPs)—when slaughter establishments have a high rate of positive test results for *E. coli* O157:H7 or other STEC or virulence markers in trim samples.

On May 7, 2012, FSIS announced the availability of compliance guidance for establishment sampling and testing for Shiga toxin-producing *E. coli* (STEC) organisms or virulence markers (77 FR 26725). This guidance includes criteria that establishments can use to determine if they are experiencing an HEP. The document explains that extensive sampling of trimmings and careful evaluation of test results can help establishments identify places in their processes where controls are poor, and where they can take corrective actions. It recommends that establishments continually strive to reduce the percentage of test results that are positive for *E. coli* O157:H7 (or STEC organisms or virulence markers).

During an HEP, adulteration may be more widespread than a positive-testing lot of product may indicate. By following the guidance and withholding adulterated product from commerce during HEPs, establishments are more likely to avoid costly recalls. While establishments can use the guidance now, FSIS requested comments on it and will update it as necessary in response to the comments.

OIG also recommended that FSIS re-evaluate and improve its policies on inspector collection of trim samples by, for example, ensuring that inspectors randomly select product for sampling, ensuring that inspectors collect samples of proper weight, and ensuring that they do not take multiple samples from single pieces of trim.

To ensure that all raw ground beef, beef manufacturing trimmings, and bench trim samples are the necessary weight, FSIS recently issued instructions to inspection program personnel on the use of new sample collection bags that have fill-lines.[6] In addition, in response to other recommendations, FSIS will evaluate its instructions for sampling and determine what other changes may be needed.

OIG recommended that FSIS improve communication with industry by issuing guidance to assist establishments in selecting laboratories according to the laboratories' testing capabilities. On March 8, 2012, FSIS announced the availability of guidance for establishments in the selection of commercial and private microbiological testing laboratories (77 FR 13999). The guidance includes a checklist for industry on the issues to consider and also the types of documents that establishments should maintain to support their testing programs.[7] Establishments can use the guidance now. FSIS asked for comments on the guidance and will make any necessary changes to it after evaluating the comments.

OIG further recommended that FSIS determine whether to increase sampling of trim, assess its performance measures for *E. coli* O157:H7, clarify current instructions to inspection personnel in its directive on verification of controls for the pathogen (FSIS Directive 10,010.1), and assess the quality of inspection in Talmadge-Aiken establishments. FSIS is evaluating these issues and will respond to these recommendations.

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Done at Washington, DC, on: September 13, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–23078 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–DM–P

[5] U.S. Department of Agriculture. Office of Inspector General. May 2012. Application of FSIS Sampling Protocol for Testing Beef Trim for *E. coli* O157:H7. Audit Report 24601–0001–31. Washington, DC This report is posted at: *http://www.usda.gov/oig/webdocs/24601-0001-31.pdf* (accessed June 20, 2012).

[6] The notice is available at: *http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/35-12.pdf* (accessed June 20, 2012).

[7] The guidance is available at: *http://www.fsis.usda.gov/PDF/Guidance_Selecting_Micro_Testing_Lab.pdf* (accessed June 20, 2012).

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Central Idaho Resource Advisory Committee will meet in Salmon, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects to be funded under Public Law 112–141.

DATES: The meeting will be held September 28, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Public Lands Center, 1206 S. Challis Street, Salmon, Idaho 83467.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Public Lands Center, 1206 S. Challis Street, Salmon, Idaho 83467. Please call ahead to 208–756–5100 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Amy Baumer, Resource Advisory Committee Coordinator, 208–756–5145 (voice) or 208–756–5151 (fax) or email *abaumer@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed under **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and recommendation of projects to be funded under Public Law 112–141. An agenda will be posted at the following Web site address in advance of the meeting date: *http://www.fs.usda.gov/scnf/*. A summary of the meeting will be posted at *http://www.fs.usda.gov/scnf/within* 21 days of the meeting.

Dated: September 12, 2012.

Stefani Melvin,

Acting Forest Supervisor.

[FR Doc. 2012–23013 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

White Pine-Nye Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice meeting.

SUMMARY: The White Pine-Nye Resource Advisory Committee will meet in Eureka, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. The meetings are open to the public. The purpose of the meeting is to provide updates on projects approved for fiscal year 2012.

DATES: The meeting will be held October 15, 2012, at 9 a.m.

ADDRESSES: The meeting will be held at the Eureka County Annex, 701 S. Main Street, Eureka, Nevada 89316. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Tonopah Ranger District Office, 1400 S. Erie Main Street, Tonopah, Nevada. Please call ahead to 775–482–6286 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Steven Williams, RAC Designated Federal Official, Austin Ranger District, 100 Midas Canyon Road, P.O. Box 130, Austin, Nevada 89310, 775–964–2671, email *swilliams01@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review and approve previous meeting's minutes and business expenses, Review projects approved and implemented in fiscal year 2012, and Public Comment. More information is available at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf*. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by October 8, 2012 to be scheduled on the agenda.

Written comments and requests for time for oral comments must be sent to Tonopah Ranger District, P.O. Box 3940, Tonopah, Nevada 89049, or by email to *lebernardi@fs.fed.us* or via facsimile to 775–482–3053.

Dated: September 12, 2012.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2012–23054 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee will meet in Craig, AK. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 28, 2012 at 10 a.m.

ADDRESSES: The meeting will be held at the Craig Ranger District, 504 9th Street, Craig, Alaska 99921. If you wish to attend via teleconference please call 907–826–3271 for instructions.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Craig Ranger District. Please call ahead to 907–826–

3271 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida RAC Coordinator at 907–826–3271 or by email at *rsakraida@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review of projects submitted for review. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 18, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Prince of Wales RAC c/o District Ranger P.O. Box 500 Craig, AK 99921, or by email to *rsakraida@fs.fed.us*, or via facsimile to 907–826–2972. A summary of the meeting will be posted at *https://wwwnotes.fs.fed.us/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: September 6, 2012.

Meave Taylor,

Acting District Ranger.

[FR Doc. 2012–22925 Filed 9–18–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation: Notice of Intent To Prepare an Environmental Assessment and To Hold Public Scoping Meetings

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Assessment and Hold Public Scoping Meetings.

SUMMARY: The Rural Utilities Service (RUS) intends to prepare an Environmental Assessment (EA) and hold public scoping meetings and to meet its responsibilities under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS's Environmental and Policies and Procedures (7 CFR part 1794) in connection with potential impacts related to a proposal by Georgia Transmission Corporation (GTC). The proposal consists of constructing approximately 40 to 45 miles of 230 kilovolt (kV) transmission line in portions of Atkinson, Berrien, Clinch, Coffee, and Lanier Counties, Georgia. GTC is requesting that RUS provide financial assistance for the proposal.

DATES: RUS will conduct two public scoping meetings in an open-house format on: Wednesday, September 26, 2012, from 3 to 7 p.m. at: the Holiday Inn Express Conference Room, 1636 South Peterson Ave., Douglas, Georgia 31534. Thursday, September 27, 2012, from 6 to 8 p.m. at: The Threatte Center, 209 South Highway 221, Lakeland, Georgia 31635. Representatives from RUS and GTC will be available at the meetings to discuss the environmental review process, the proposal, and the scope of environmental issues currently under consideration. Written comments regarding the proposal may be submitted at the public scoping meetings or by October 29, 2012, to the RUS address provided in this Notice.

ADDRESSES: To send comments or for further information, please contact Ms. Lauren McGee, Environmental Scientist, USDA Rural Utilities Service, P.O. Box 776, Haw River, North Carolina 27258–0776, telephone: (202) 695–2540, fax: (202) 690–0649, or email: *lauren.mcgee@wdc.usda.gov.*

An Alternatives Evaluation and Macro Corridor Study, which discusses the purpose and need for the proposal and the alternatives considered in the proposal's development, is available for public review at the following RUS Web site: *http://www.rurdev.usda.gov/UWP-EA-DouglasLakelanGA.html;* at GTC's headquarters office at: 2100 East Exchange Place, Tucker, Georgia 30084; and at the following repositories: Douglas/Coffee County Public Library, South Madison Ave., Douglas, Georgia 31533; Pearson Public Library, 56 East Bullard Ave., Pearson, Georgia 31642; Willacoochee Public Library, 165 East Fleetwood Ave., Willacoochee, Georgia 31650; and W.L. Miller Memorial Library, 124 South Valdosta Road, Lakeland, Georgia 31635.

SUPPLEMENTARY INFORMATION: GTC proposes to construct approximately 40 to 45 miles of 230 kV electric transmission line from the existing Douglas 115/230 kV Substation on the northwest side of the City of Douglas in Coffee County, Georgia, to an existing transmission line corridor north of the City of Lakeland in Lanier County, Georgia. In general, the project area is located in the Coastal Plains of South Georgia, east of Interstate 75 and northeast of the City of Valdosta. Proposal activities include acquisition of a 100 foot easement or right-of-way (ROW) within which the line would be sited. GTC anticipates using mostly single pole structures. Construction and line maintenance activities mostly would remain within the transmission line easement with access to the line from public ROW. Some construction activities may require stream and wetland crossings. GTC's proposal is one piece of the proposed Douglas-Pine Grove Plan (i.e., the preferred electrical solution). Four other connected actions, which will be constructed by other utilities, will be addressed in the proposed project's EA.

Among the alternatives that RUS will address in the EA is the No Action alternative, under which the proposal would not be undertaken. In the EA, the effects of the proposal will be compared to the existing conditions in the project area. Public health and safety, environmental impacts, and engineering aspects of the proposal will be considered in the EA.

RUS is the lead federal agency, as defined at 40 CFR 1501.5, for preparation of the EA. With this Notice, federally recognized Native American Tribes and Federal agencies with jurisdiction or special expertise are invited to be cooperating agencies. Such tribes or agencies may make a request to RUS to be a cooperating agency by contacting the RUS contact provided in this Notice. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6(b).

As part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (Section 106) and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to scoping will inform RUS decision-making in its Section 106 review process. Any party

wishing to participate more directly with RUS as a ''consulting party'' in Section 106 review may submit a written request to the RUS contact provided in this Notice.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of the EA. The EA will be available for review and comment for 30 days. If RUS finds, based on the EA, that the proposal will not have a significant effect on the quality of the human environment, RUS will prepare a Finding of No Significant Impact (FONSI). Notification of the EA and FONSI will be published in the **Federal Register** and in newspapers with circulation in the proposal's area. If substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI. When appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA and review of comments, RUS determines that the proposal will have a significant effect on the quality of the human environment, the preparation of an Environmental Impact Statement will be required.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant executive orders and federal, state, and local environmental laws and regulations in addition to the completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures, 7 CFR part 1794, as amended.

Dated: September 6, 2012.

Jon Melhus,

Acting Director, Engineering and Environmental Staff, USDA, Rural Utilities Service.

[FR Doc. 2012–23018 Filed 9–18–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC120

Aquatic Nuisance Species Task Force Strategic Plan 2013—2017

Correction

In notice document 2012–19161, appearing on pages 46730–46732 in the issue of Monday, August 6, 2012, make the following correction:

On page 46730, in the third column, under the heading **DATES**, the entry ''Comments must be received within 45 days after September 20, 2012.'' should read ''Comments must be received within 45 days after August 6, 2012.''

[FR Doc. C1–2012–19161 Filed 9–18–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2012–0029]

Extension of Comment Period for Notice of Inquiry Regarding Adjustment of Fees for Trademark Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') is extending until October 22, 2012, the period for public comment regarding possible adjustments to trademark application filing fees. The USPTO is considering such adjustments so as to promote efficiency for the USPTO and customers by incentivizing complete electronic communication.

DATES: Written comments must be received on or before October 22, 2012.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2012–0029). The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov,* and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272–8742.

SUPPLEMENTARY INFORMATION: On August 16, 2012, the USPTO published a notice of inquiry to provide the public, including user groups, with an opportunity to comment on possible adjustments to trademark application fees (77 FR 49426 (August 16, 2012)). The notice invited the public to submit written comments on the possible adjustments on or before October 15, 2012. The USPTO is now extending the period for submission of public comments until October 22, 2012.

Dated: September 13, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–23135 Filed 9–18–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–T–2012–0031]

Extension of Comment Period for Request for Comments Regarding Amending the First Filing Deadline for Affidavits or Declarations of Use or Excusable Nonuse

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Patent and Trademark Office (''USPTO'' or ''Office'') is extending until November 5, 2012, the period for public comment regarding a potential legislative change to amend the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 of the Trademark Act. The change would require Congress to amend the Trademark Act, and the USPTO is interested in receiving public input on whether and why such an amendment is or is not favored.

DATES: Written comments must be received on or before November 5, 2012.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments may also be submitted by

mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building—East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2012–0031). The comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov*, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272–8742.

SUPPLEMENTARY INFORMATION: On August 16, 2012, the USPTO published a request for comment to provide the public, including user groups, with an opportunity to comment on a potential legislative change to amend the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 of the Trademark Act from between the fifth and sixth years after the registration date, or the six-month grace period that follows, to between the third and fourth years after the registration date, or the six-month grace period that follows (77 FR 49425 (August 16, 2012)).

The notice invited the public to submit written comments on the potential change on or before October 15, 2012. The USPTO is now extending the period for submission of public comments until November 5, 2012.

Dated: September 13, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–23117 Filed 9–18–12; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–C0009]

Haier America Trading, LLC, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Haier America Trading, LLC, containing a civil penalty of $850,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 4, 2012.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 12–C0009, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7592.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 13, 2012.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'') and16 C.F.R. 1118.20, Haier America Trading, LLC (''Haier America'') and staff of the United States Consumer Product Safety Commission (''staff'' and ''Commission'') hereby enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order resolve staff's allegations set forth below.

The Parties

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Haier America is a limited liability company, organized and existing under the laws of the State of New York, with its principal corporate office located at 1356 Broadway, New York, NY.

Staff Allegations

4. Between October 2006 and October 2009, Haier America distributed in commerce, including through importation and sale to retailers, approximately 53,800 electric blenders (''Blenders''). The Blenders were sold at retail stores in the United States for between $25 and $60.

5. The Blenders are ''consumer products'' and, at all relevant times, Haier America was an ''importer'' of these consumer products, which were ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8), and (11).

6. The Blenders are defective because the nut holding the blade assembly can dislodge during use, allowing the blade assembly pieces to break apart, and/or crack the Blenders' glass jar, posing a laceration hazard to consumers.

7. From January 2007 through September 2009, Haier America received approximately 56 incident reports regarding the Blenders, including a report of an injury to a consumer's hand.

8. Haier America had obtained sufficient information to reasonably support the conclusion that the Blenders contained a defect which could create a substantial product hazard, or that the Blenders created an unreasonable risk of serious injury or death. Haier America was required to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

9. Despite having information regarding the Blenders' defect, Haier America did not file its Full Report with the Commission until October 8, 2009. Haier America recalled the Blenders on December 2, 2009.

10. In failing to inform the Commission about the Blenders immediately, Haier America knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

11. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Haier America is

subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Haier America Trading, LLC

12. Haier America denies the Staff's allegations, including, but not limited to, that the Blenders contain a defect that could create a substantial product hazard or create an unreasonable risk of serious injury or death, and that Haier America failed to timely notify the Commission in accordance with Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

13. Haier America notified CPSC upon discovering that a nut securing the blade assembly had not been consistently tightened during production of certain units of the Blenders. Haier America was (and is) aware of only one report of a minor cut to a consumer's hand, associated with the reported issue, which did not require medical attention. Haier America conducted a voluntary recall of the Blenders to replace the blade assembly pursuant to CPSC's Fast Track recall program, acting to reduce the risk of injury, in furtherance of its customers' best interests.

Agreement of the Parties

14. Under the CPSA, the Commission has jurisdiction over this matter and over Haier America.

15. In settlement of staff's allegations, Haier America shall pay a civil penalty in the amount of $850,000.00 within 20 calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via *www.pay.gov.*

16. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Haier America, nor does it constitute a determination by the Commission, that Haier America violated the CPSA's reporting requirements.

17. In consideration of Haier America's payment, the Commission agrees to release Haier America, as well as its current and former directors, officers, employees, agents and representatives from any civil claim that the Commission has or may have against those parties arising out of or relating to the recall of the Blenders announced on December 2, 2009, or the Staff's allegations that Haier America failed to report in a timely manner a potential hazard involving the Blenders.

18. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 C.F.R. 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 C.F.R. 1118.20(f).

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Haier America knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Haier America failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Haier America and each of its successors and/or assigns.

22. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Haier America and each of its successors and/or assigns to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms or the Agreement and the Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Haier America agree that severing the provision materially affects the purpose of the Agreement and Order.

HAIER AMERICA TRADING, LLC.
Dated: August 23,2012.

Mary Ann G. Lemere,
VP & General Counsel, Haier America Trading, LLC, 1356 Broadway, New York, NY 10018.

Dated: August 28, 2012.

Eric A. Rubel, Esquire,
Arnold & Porter, LLP, 555 Twelfth Street NW., Washington, DC 20004–1206, Counsel for Haier America Trading, LLC.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel.

Mary B. Murphy,
Assistant General Counsel.

Dated: September 4, 2012.

Belinda V. Bell,
Trial Attorney, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Haier America Trading, LLC (''Haier America''), and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Haier America, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

Ordered that the Settlement Agreement be, and is, hereby, accepted; and *it is*

Further ordered, that Haier America shall pay a civil penalty in the amount of $850,000.00 within 20 calendar days of receiving service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made electronically to the CPSC via *www.pay.gov*. Upon the failure of Haier America to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Haier America at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). Provisionally accepted and provisional Order issued on the *13th* day of *September,* 2012.

By Order of the Commission:

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission

[FR Doc. 2012–23043 Filed 9–18–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–2]

Notice of Telephonic Prehearing Conference

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Notice of telephonic prehearing conference In the Matter of ZEN MAGNETS, LLC, CPSC Docket No. 12–2.

DATES: September 27, 2012, at 9:00 a.m. Mountain/10:00 a.m. Central/11:00 a.m. Eastern.

ADDRESSES: Members of the public are welcome to attend the prehearing conference at the Courtroom of Hon. Dean C. Metry at 601 25th Street, 5th Floor Courtroom, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Jan Emig, Paralegal Specialist, U.S. Coast Guard ALJ Program, (409) 765–1300.

SUPPLEMENTARY INFORMATION: Any or all of the following shall be considered during the prehearing conference:

(1) Petitions for leave to intervene;

(2) Motions, including motions for consolidation of proceedings and for certification of class actions;

(3) Identification, simplification and clarification of the issues;

(4) Necessity or desirability of amending the pleadings;

(5) Stipulations and admissions of fact and of the content and authenticity of documents;

(6) Oppositions to notices of depositions;

(7) Motions for protective orders to limit or modify discovery;

(8) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;

(9) Limitation of the number of witnesses, particularly to avoid duplicate expert witnesses;

(10) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and consumer product safety rules;

(11) Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence;

(12) Consideration of offers of settlement;

(13) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties; and

(14) Such other matters as may aid in the efficient presentation or disposition of the proceedings.

Telephonic conferencing arrangements to contact the parties will be made by the court. Mary B. Murphy, Esq., Jennifer Argabright, Esq., Counsel for the U.S. Consumer Product Safety Commission, shall be contacted by a third party conferencing center at 301/504–7809. David C, Japha, Esq., counsel for ZEN MAGNETSm, LLC (Respondent) shall be contacted by a third party conferencing center at (303) 964–9500.

Authority: Consumer Product Safety Act 15 U.S.C. 2064.

Dated: September 14, 2012

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–23071 Filed 9–18–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Telephonic Prehearing Conference; Correction

AGENCY: U.S. Consumer Product Safety Commission.

Correction

Federal Register Citation of Previous Announcement:

Vol. 77, No. 179, Friday, September 14, 2012, page 56814.

Notice: Notice of Telephonic Prehearing Conference, CPSC Docket 12–1.

Correction: The name of the docket and respondent is incorrect. The correct name of the respondent is Maxfield and Oberton Holdings, LLC.

Contact Person for Additional Information: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: September 14, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–23070 Filed 9–18–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–HA–0117]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Mr. Mike Talisnik, Office of the ASD (HA)—TMA, 7700 Arlington Blvd., Suite 5101, Falls Church, VA 22042, (703) 681–8723.

Title; Associated Form; and OMB Number: TriCase Case Management & Authorization System; OMB Control Number 0720–TBD.

Needs and Uses: TriCase (Case Management and Authorization System) manages cases involving the coordination of medical care and medical transportation. The system provides International SOS employees with a central application to interact with TRICARE beneficiaries, providers, family members, and government representatives to manage healthcare delivery activities. TriCase is available in four International SOS offices worldwide and is limited to authorized TRICARE users who meet appropriate clearance levels. The system has been tailored to support TRICARE Management Activity (TMA).

Affected Public: Individuals or households.

Annual Burden Hours: 28,800.

Number of Respondents: 4,800 per month.

Responses per Respondent: 12.

Average Burden per Response: 30 minutes.

Frequency: Monthly.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Information collected is for TRICARE beneficiaries requesting health care services outside the 50 United States and District of Columbia. The information collected can come in writing from a Military Treatment Facility (MTF), from a TRICARE beneficiary or from a host nation provider. The information can also be collected telephonically when assisting the beneficiary or host nation provider rendering the care. The system allows International SOS to document interaction with the patient (including emails, letters, faxes, and phone conversations). It allows for notes and actions to be documented in the system to allow the ability to track progress of all types of cases and authorizations. It further allows for validation of enrollment and eligibility for services. This information is used to assign staff with various tasks to manage an incident of care both administratively and medically to manage a case.

Dated: September 14, 2012.

Aaron Siegel,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–23107 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–HA–0116]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to SNPMIS Project Officer, DHSS, 7700 Arlington Boulevard, Falls Church, VA 22042–2902 or call 703–681–2236.

Title; Associated Form; and OMB Number: Special Needs Program Management Information System (SNPMIS); OMB Control Number 0720–TBD.

Needs and Uses: Special Needs Program Management Information System (SNPMIS) provides access to a comprehensive program of therapy, medical support, and social services for young Department of Defense (DoD) Military Health System (MHS) beneficiaries with special needs. SNPMIS is the Military Health System (MHS) automated information system designed to ensure the DoD meets the unique information requirements associated with implementation of the Individuals with Disabilities Education Act (IDEA).

SNPMIS captures records referral, evaluation, eligibility, and service plan data for children with special needs who are eligible for MHS services under IDEA. Management reports provide historical analysis to monitor ongoing improvements in quality of care initiatives. It also allows program managers to identify areas where additional services are needed. At the service level, activities of different programs can be compared to determine best practices that can be implemented throughout the Educational and Developmental Intervention Services (EDIS) clinics. The system's remote function allows EDIS staff members to enter a young beneficiary's data while conducting activities from that child's school or home.

Affected Public: Categories of individuals in the system include children of members of the Armed Forces and civilians who are entitled to receive early intervention and special education services from the DoD under the IDEA.

Annual Burden Hours: 1775 hours.

Number of Respondents: 1065.

Responses per Respondent: 2.

Average Burden per Response: 50 minutes.

Frequency: on entry to/exit from program.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Information is collected from the individual to whom the record pertains, reports from physicians and other medical department personnel, reports and information from other sources including educational institutions, medical institutions, public and private health, and welfare agencies. Reports from physicians and other medical department personnel; Reports and information from other sources including educational institutions; Medical institutions; Public and private health and welfare agencies.

Information from the family may be collected during an intake meeting, a meeting to develop a service plan, as a result of provision of services, performance of an evaluation, or other coordination activities. The EDIS clinic or Department of Defense Dependents School (DoDDS) school must obtain permission from the family before information is collected from or provided to an external agency, and prior to conducting evaluations or providing services. Before information is released to an external agency the parents must sign a Health Insurance Portability and Accountability Act (HIPAA) release.

Personally identifiable information (PII) and protected health information (PHI) that is collected by the system includes: Name, Social Security Number (SSN), Family member prefix (FMP), Birth Date, Race/Ethnicity, Gender, Marital Status, Spouse Information, Child Information, Disability Information, Home, Personal Cell, and Work Phone Numbers—Child and Parents, Emergency Contact, Education Information: Child's School Address; Individual educational program plans, Sponsor Name, Sponsor SSN Sponsor and Spouse rank or title, Sponsor's unit, Other child care locations, Provider's name and title that evaluate and provide intervention, Medical Information: Clinics and medical summaries, EDIS process and activities data including referral, evaluation, eligibility, and service plans.

The Computer Security Act of 1987, which went into effect in September 1988, requires all U.S. government employees, contractors, and others who directly affect federal program must undergo periodic training in computer security. All users of systems containing sensitive data must also receive computer training corresponding to the sensitivity of the data to which they access. All persons who have access to or who are users of SNPMIS must have an Information Technology Sensitive (IT) clearance level III or higher. SNPMIS users are health care providers and SNPMIS Technical Support Team. The health care providers have at least an IT II clearance, which allows them access to basic functions of SNPMIS (i.e., data querying, viewing, and printing). SNPMIS Development Team members' have at least an IT II clearance. They have access to information regarding the creation and maintenance of user accounts, testing and system monitoring. They also perform SNPMIS audit setup and reviews, and set up roles and responsibilities. All SNPMIS users are subjected to the new hiring screening process associated with their position. Contractors, however, are required to complete a Standard Form 86 from which a National Agency Check with Inquiry's (NACI) and credit check can be conducted.

Dated: September 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–23085 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061 Docket 2012–0076; Sequence 9]

Federal Acquisition Regulation; Submission for OMB Review; Transportation Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Transportation Requirements. A notice was published in the **Federal Register** at 77 FR 24713, on April 25, 2012. One respondent submitted comments.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 19, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0061, Transportation Requirements, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting the OMB Control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0061, Transportation Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0061, Transportation Requirements'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0061, Transportation Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0061, Transportation Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 501–1448 or via email @ *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose

FAR Part 47 contains policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies. The FAR part also contains policies and procedures when acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. Contractors are required to provide the information in accordance with the following FAR Part 47 clauses: 52.247–29 through 52.247–44, 52.247–48, 52.247–52, and 52.247–64. The information is used to ensure that: (1) Acquisitions are made on the basis most advantageous to the Government and; (2) supplies arrive in good order and condition, and on time at the required place.

II. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval

of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR Part 47, and the clauses 52.247–29 through 52.247–44, 52.247–48, 52.247–52, and 52.247–64. The purpose of this part is to (1) apply transportation and traffic management considerations in the acquisition of supplies, and (2) to acquire transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms. The Government must ensure that instructions to contractors result in the most efficient and economical use of transportation services and equipment. These clauses are mandatory depending on the method of transportation used, and they provide the Government the assurance that it will receive the supplies in the agreed condition, and at the proper destination. Not granting this extension would consequently eliminate the Government's ability to receive supplies in good order and condition, as well as receive the supplies in a timely manner.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and it was determined that an upward adjustment was warranted. At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

III. Annual Reporting Burden

There is no centralized database system that maintains statistics on the information regarding the nature of the supplies, method of shipments, place and time of shipment, applicable charges, marking of shipments, shipping documents, and other related items; however, based on input from subject matter experts within the Federal Government, an upward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 74 FR 23406 on May 19, 2009. The upward adjustment is due to an estimated increase in the number of responses per respondents from 21.32 to 22, and an increase in the average hours per response from .048 to .05.

Respondents: 65,000.
Responses per Respondent: 22.
Annual Responses: 1,430,000.
Hours per Response: .05.
Total Burden Hours: 71,500.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: September 13, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–23134 Filed 9–18–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079; Docket 2012–0076; Sequence 13]

Federal Acquisition Regulation; Submission for OMB Review; Corporate Aircraft Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning corporate aircraft costs. A notice was published in the **Federal Register** at 77 FR 20012, on April 3, 2012. One respondent submitted comments.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 19, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0079, Corporate Aircraft Costs, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0079, Corporate Aircraft Costs''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0079, Corporate Aircraft Costs'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0079, Corporate Aircraft Costs.

Instructions: Please submit comments only and cite Information Collection 9000–0079, Corporate Aircraft Costs, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Contract Policy Division, GSA, (202) 501–3221 or via email *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information (e.g., destination, passenger name, purpose of trip, etc.). This information, as required by FAR 31.205–46, Travel Costs, is used to ensure that costs of owned, leased, or chartered aircraft are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to documentation requirements under the cost principle at FAR 31.205–46. This documentation is necessary to ensure that the cost of owned, chartered, or leased aircraft are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to Government contracts. Documentation regarding (1) date, time, and points of departure, (2) destination and time of arrival, and (3) name of each passenger, is already required under Federal Aviation Administration regulations. As such, the documentation required at FAR 31.205–46 places a small burden on Government contractors. Not granting this extension may result in improper charges against Government contracts for flights on contractor aircraft.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The same respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time. The historical estimates remain valid. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burden

Number of Respondents: 3,000.
Responses Per Respondent: 1.
Total Responses: 3,000.
Average Burden per Response: 6 hours.
Total Burden Hours: 18,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: September 13, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–23139 Filed 9–18–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2011 Inventory of Contracts for Services

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: DoD announces the availability of the Inventory of Contracts for Services for Fiscal Year 2011 pursuant to section 807 of the National Defense Authorization Act of Fiscal Year 2008. Inventory is available to the public.

DATES: Comments should be submitted by October 10, 2012.

ADDRESSES: Submit comments to: Office of the Director, Defense Procurement and Acquisition Policy, ATTN: OUSD (AT&L) DPAP (CPIC), 3060 Defense Pentagon, Washington, DC 20301–3060. Comments also may be submitted by email to *Jeffrey.Grover@osd.mil.*

FOR FURTHER INFORMATION CONTACT: Jeff Grover, telephone 703–697–9352.

SUPPLEMENTARY INFORMATION: In accordance with section 2330a of title 10 United States Code, as amended by section 807 of the National Defense Authorization Act for Fiscal Year 2008, the Office of the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting (DPAP/CPIC) will make available to the public the annual inventory of contracts for services. The inventory is posted to the Defense Procurement and Acquisition Policy Web site at: *http://www.acq.osd.mil/dpap/cpic/cp/acquisition_of_services_policy.html.*

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2012–23050 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0115]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend three Systems of Records.

SUMMARY: The Defense Threat Reduction Agency is amending three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on October 22, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Gaines, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201 or by phone at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the records systems being amended are set forth below. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 014

SYSTEM NAME:

Student Records (May 9, 2007, 72 FR 26343).

CHANGES:

* * * * *

CONTESTING RECORD PROCEDURES:

Delete and replace with ''The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA privacy program; 32 CFR 318; or may be obtained from the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

HDTRA 023

SYSTEM NAME:

Reasonable Accommodation Program (July 9, 2007, 72 FR 37201).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete and replace with ''Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

NOTIFICATION PROCEDURE:

Delete and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should submit a written request to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Request should contain individual's name, address, and proof of identity (photo identification or must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

RECORD ACCESS PROCEDURES:

Delete and replace with ''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Request should contain individual's name, address, and proof of identity (photo identification or must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).' ''

CONTESTING RECORD PROCEDURES:

Delete and replace with ''The DTRA rules for accessing records and for

contesting contents, and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA privacy program; 32 CFR 318; or may be obtained from the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

HDTRA 024

SYSTEM NAME:

Recall Roster (May 9, 2007, 72 FR 26344).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete and replace with ''Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

NOTIFICATION PROCEDURE:

Delete and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should submit a written request to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the individual's full name and duty station.''

RECORD ACCESS PROCEDURES:

Delete and replace with ''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the individual's full name and duty station.''

CONTESTING RECORD PROCEDURES:

Delete and replace with ''The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA privacy program; 32 CFR 318; or may be obtained from the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

RECORD SOURCE CATEGORIES:

Delete and replace with ''The individual and official personnel office documents containing point-of-contact information.''

* * * * *

[FR Doc. 2012–23068 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0091]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend two Systems of Records.

SUMMARY: The Defense Finance and Accounting Service is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on October 22, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Outlaw, (317) 510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record systems being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5500b

SYSTEM NAME:

Garnishment Processing Files (August 24, 2005, 70 FR 49589).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Integrated Garnishment System (IGS).''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation, 32 CFR part 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–

HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

T7290

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System (September 1, 2005, 70 FR 52079)

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 26 U.S.C. 6103(m)(2), Confidentiality and disclosure of returns and return information; 31 U.S.C. 3511, Judicial review of requests for information; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans; 31 U.S.C. 3513, Financial reporting and accounting system; 31 U.S.C. 3514, Responsiveness to Congress; 31 U.S.C. 3701, Definitions; 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3716, Administrative offset; 31 U.S.C. 3720, Powers of Secretary; and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation, 32 CFR part 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–23067 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2012–0017]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on October 22, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 13, 2012 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: September 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC P

SYSTEM NAME:

Separation Case Files (Officer and Airman) (May 9, 2003, 68 FR 24949).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''National Personnel Records Center, Military Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. Air Reserve Personnel Center, 6760 East Irvington Place, Records Branch, 4450, Denver, CO 80280–4450. Air Force Personnel Center, 550 C. Street West, Suite 21, (Records Branch), Randolph AFB, TX 78150–4723.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty Officer and enlisted personnel, retired Air Force Officer and enlisted personnel, former Air Force Officer and enlisted personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's Name, Social Security Number (SSN), duty location, duty phone number, service member's voluntary separation application; or memorandum from commander initiating separation action; discharge board proceedings, finding, and recommendation if applicable; separation orders.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, as amended, Department of the Air Force; Air Force Instruction (AFI) 36–3206, Administrative Discharge Procedures For Commissioned Officers; AFI 36–3207, Separating Commissioned Officers; AFI 36–3208, Administrative Separation of Airmen, Air Force; AFI 36–3202, Separation Documents, AFI 36–3204, Procedures for applying as a Conscientious Objector; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Records collected and information contained therein are used by Secretary of the Air Force or delegated authority to determine whether officer or airman is approved or disapproved for separation in accordance with applicable statutes and governing Department of Defense and Air Force Instructions.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of the 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Department of Veterans Affairs (VA) to determine eligibility for VA benefits, entitlements or medical care.

State Unemployment Compensation offices for verification of military service related information for unemployment compensation claims.

Respective local state government offices for verification of Vietnam 'State Bonus' eligibility.

Department of Labor for claims of civilian employees formerly in military service, verification of service-related information for unemployment compensation claims, investigations of possible violations of labor laws and for pre-employment investigations.

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Maintained in file folders, binders, and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name and/or SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained by agencies identified as primary locations reflected above under ''System Locations''. Access is limited to individuals who request records for the performance of their official duties. Records are stored in file cabinets in buildings that are locked with controlled access entry requirements. Electronic files are only accessed by authorized personnel with secure Common Access Card.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary records are maintained for 90 days from date of separation, or 90 days from date of disapproval then destroyed by tearing shredding, or burning. Master records designated as permanent, remain in military personnel records system and permanently retired with master personnel record group.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Retirements and Separations Branch, 550 C Street West, Suite 3, Randolph Air Force Base, TX 78150–4713.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Separations Branch, Air Force Personnel Center, 550 C Street West, Suite 3, Randolph Air Force Base, TX 78150–4713.

For verification purposes, individual should provide full name, SSN, and their signature. In addition, requester must provide notarized statement or unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Individuals may appear in person at the responsible official's office or respective repository for records for personnel in a particular category. The agency which maintains the permanent record depends on the date of separation from the Air Force and whether the service member was discharged (no remaining military service obligation) or whether service member was transferred to reserves or guard upon separation from active duty. Recommend individuals seeking information regarding location of their separation case file first contact the Chief, Separation Branch, indicated above before traveling or appearing in person to determine location of their records. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written inquiries to the Chief, Separations Branch, Air Force Military Personnel Center, 550 C Street West, Suite 3, Randolph Air Force Base, TX 78150–4713.

For verification purposes, individual should provide full name, SSN, and signature. In addition, requester must provide notarized statement or unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Individuals may also complete a Standard Form 180, Request Pertaining to Military Records, to request access to separation case files on themselves. Individuals may appear in person at the responsible official's office or respective repository for records for personnel in a particular category. Agency which maintains the permanent record depends on date of separation from the Air Force and whether service member was discharged (no remaining military service obligation) or whether service member was transferred to the reserves

or guard upon separation from active duty. Recommend individuals seeking information regarding access to their separation case file first contact the Chief, Separation Branch, indicated above before traveling or appearing in person to determine the location of their records. Official mailing addresses are published as an appendix to the Air Force's compilation of system of records notices.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''Requests for records or documents contained in this System of Records should be processed under the guidelines outlined in AFI 33–332, Air Force Privacy Program, and Department of Defense (DoD) 5400.7, DoD Freedom of Information Act Program; and Air Force Manual 33–332, Freedom of Information Program.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Documents generated by the service member, supervisor(s), and commander(s) related to separation or discharge to include separation application, memorandums, and supporting documentation.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–23066 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

[Docket No. DARS–2012–0036–001]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Defense Acquisition Regulations System 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 October 19, 2012.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 245, Government Property, and the following related clauses and forms: DD Form 1149, Requisition and Invoice/Shipping Document; DD Form 1348–1A, DoD Single Line item Release/Receipt Document; DD Form 1639, Scrap Warranty; DD Form 1640, Request for Plant Clearance; DD Form 1641, Disposal Determination/Approval; OMB Control Number 0704–0246.

Type of Request: Extension.

Number of Respondents: 16,075.

Responses per Respondent: 2.97.

Annual Responses: 47,815.

Average Burden per Response: 1.01 hours.

Annual Burden Hours: 48,423.

Needs and Uses: This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of contractor inventory.

a. DFARS 245.302(1)(i) requires contractors to request and obtain contracting officer approval before using Government property on work for foreign governments and international organizations.

b. DFARS subpart 245.70, Plant Clearance Forms, prescribes the requirements for the use of the following forms:

(1) *DD Form 1149,* Requisition and Invoice/Shipping Document (JUL 2006): Prescribed at DFARS 245.7001–2, the form is completed by the contractor for transfer and donation of excess contractor inventory.

(2) *DD Form 1348–1A,* DoD Single Line Item Release/Receipt Document: Prescribed at DFARS 245.7001–3, the form is used when authorized by the plant clearance officer.

(3) *DD Form 1640,* Request for Plant Clearance (JUN 2003): Prescribed at DFARS 245.7001–4, the contractor completes this form to request plant clearance assistance or transfer plant clearance.

(4) *DD Form 1641,* Disposal Determination/Approval (APR 2000): Prescribed at DFARS 245.7001–5, this form is used to record rationale for the following disposal determinations:

(i) Downgrade useable property to scrap.

(ii) Abandonment or destruction.

(iii) Noncompetitive sale of surplus property.

(iv) Other disposal actions.

c. In addition, the following DD form is prescribed in the clause at DFARS 252.245–7004, Reporting, Reutilization, and Disposal (AUG 2011):

DD Form 1639, Scrap Warranty: When scrap is sold by the contractor, after Government approval, the purchaser of the scrap material(s) may be required to certify, by signature on the DD Form 1639, that (i) the purchased material will be used only as scrap and (ii), if sold by the purchaser, the purchaser will obtain an identical warranty from the individual buying the scrap from the initial purchaser. The warranty contained in the DD Form 1639 expires by its terms five years from the date of the sale.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or maintain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra 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.

Intructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public 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 provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

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, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2012–22929 Filed 9–18–12; 8:45 am]

BILLING CODE 6820–ep–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2012–0017]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Navy is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on October 22, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Department of the Navy, DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000 or call at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

NM01070–14

Personnel Information System for Training, Operations, and Logistics (PISTOL) (June 8, 2009, 74 FR 27125).

REASON:

All data from PISTOL was transferred to the Advanced Skills Management application, and is now covered by System of Records, NM01500–3, Advanced Skills Management (ASM) System Records (November 12, 2008, 73 FR 66883). Only convenience copies of the PISTOL data are currently retained and shall be destroyed in accordance with the National Archives and Records Administration disposition schedule. Therefore, NM01070–14, Personnel Information System for Training, Operations, and Logistics (PISTOL) can be deleted.

[FR Doc. 2012–23069 Filed 9–18–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Institute of Education Sciences; NPEFS 2011–2014: Common Core of Data (CCD) National Public Education Financial Survey

SUMMARY: The National Public Education Financial Survey (NPEFS) is an annual collection of state-level finance data that has been included in the National Center of Education Statistics' Common Core of Data since FY 1982 (school year 1981–82). NPEFS provides function expenditures by salaries, benefits, purchased services, and supplies, and includes federal, state, and local revenues by source.

DATES: Interested persons are invited to submit comments on or before October 19, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04890. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: NPEFS 2011–2014: Common Core of Data (CCD) National Public Education Financial Survey.

OMB Control Number: 1850–0067.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 5,264.

Abstract: The NPEFS collection includes data on all state-run schools from the 50 states, the District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS data are used for a wide variety of purposes, including to calculate federal program allocations such as states' ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, certain formula grant programs (e.g. Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Impact Aid, and Indian Education programs). Furthermore, other federal programs, such as the Educational Technology State Grants program (Title II Part D of the ESEA), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, and the Teacher Quality State Grants program (Title II Part A of the ESEA) make use of SPPE data indirectly because their

formulas are based, in whole or in part, on State Title I Part A allocations. No changes have been made to the NPEFS since its last Office of Management and Budget approval in January 2012. This submission is to conduct the annual collection of state-level finance data for FY 2012–2014.

Dated: September 14, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–23094 Filed 9–18–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Institute of Education Sciences; FAFSA Completion Project Evaluation

SUMMARY: The Institute of Education Sciences (IES) at the U.S. Department of Education (ED) is conducting a rigorous study of the Free Application for Federal Student Aid (FAFSA) Completion Project. The project will provide 80 Local Educational Agencies or school districts with access to data on whether specific students have completed the FAFSA.

DATES: Interested persons are invited to submit comments on or before October 19, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 04887. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: FAFSA Completion Project Evaluation.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 1,120.

Abstract: This information is intended to help schools implement targeted outreach to seniors and their families who have not yet submitted a FAFSA, or who submitted a FAFSA that may be incomplete. The evaluation of the project is being conducted by IES staff in the National Center for Education Evaluation. The study will use a delayed-treatment control group design, and will examine whether there is an impact from access to the data on students' application for and receipt of federal student aid and a proxy for college enrollment. The data collection to address these research questions will create minimal burden on respondents and have limited cost to the government. IES is requesting permission to obtain lists of high schools and student rosters from the participating districts or their high schools. Other data for the study—completion of a FAFSA, receipt of Pell Grant, and a proxy for college enrollment (whether an institution of higher education has drawn down the Pell Grant funds for individual students)—will come from existing ED administrative data that will not generate any new burden because they are already collected for other purposes. The analyses will be conducted internally by IES staff on data that is stripped of personally identifiable information. The results will be summarized in an internal memo.

Dated: September 14, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–23095 Filed 9–18–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Postsecondary Education; Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation

SUMMARY: The Higher Education Opportunity Act of 2008 (HEOA) calls for annual reports from states and institutions of higher education (IHEs) on the quality of teacher preparation and state teacher certification and licensure (Pub. L. 110–315, sections 205–208). The purpose of the reports is to provide greater accountability in the preparation of the nation's teaching forces and to provide information and incentives for its improvement.

DATES: Interested persons are invited to submit comments on or before October 19, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04871. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation.

OMB Control Number: 1840–0744.

Type of Review: Revision.

Total Estimated Number of Annual Responses: 1,780.

Total Estimated Number of Annual Burden Hours: 266,016.

Abstract: This request is approve revision of the state and institution and program report cards required by the Higher Education Act of 1965, as amended in 2008 by the HEOA. States must report annually on criteria and assessments required for initial teacher credentials using a State Report Card, and IHEs with teacher preparation programs (TPP), and TPPs outside of IHEs, must report on key program elements on an Institution and Program Report Card. IHEs and TPPs outside of IHEs report annually to their states on program elements, including program numbers, type, enrollment figures, demographics, completion rates, goals and assurances to the state. States, in turn, must report on TPP elements to the Secretary of Education in addition to information on assessment pass rates, state standards, initial credential types and requirements, numbers of credentials issued, TPP classification as at-risk or low performing. The information from states, institutions, and programs is published annually in The Secretary's Report to Congress on Teacher Quality.

Dated: September 14, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–23097 Filed 9–18–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Assessment (EA) for the Proposed Conveyance of Land at the Hanford Site, Richland, WA and Notice of Potential Floodplain and Wetland Involvement

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Assessment.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) and U.S. Department of Energy (DOE) NEPA implementing regulations, DOE is announcing its intention to prepare an Environmental Assessment (EA; DOE/EA–1915) to assess the potential environmental effects of conveying approximately 1,641 acres of Hanford Site land to a local economic development organization. Conveyance of the land could include title transfer, lease, easement, license, or a combination of these realty actions. The Tri-City Development Council (TRIDEC), a DOE designated Community Reuse Organization (CRO) and 501(c)(6) nonprofit corporation, submitted a proposal to DOE in May 2011 (amended October 2011) requesting the transfer of approximately 1,641 acres of land located in the southeastern corner of the Hanford Site near the City of Richland in Benton County, Washington for economic development purposes. DOE anticipates that there may be continuing mission needs, such as security and safety buffer zones on some of the requested lands, making them less suitable for conveyance. Therefore, the lands that will be addressed in the EA analysis will include the acreage requested by TRIDEC and approximately 2,772 additional acres adjacent to the requested lands. The EA will evaluate the potential environmental impacts of conveying approximately 1,641 acres of the total 4,413 acres included in the analysis area. The acreage being considered in the EA analysis is part of approximately 59 square miles of Hanford Site lands previously designated by DOE for industrial uses under the Hanford Comprehensive Land-Use Plan (CLUP), based on analyses presented in the Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP–EIS) [DOE/EIS–0222; September 1999; Record of Decision (ROD) (64 FR 61615; November 12, 1999)]. The HCP–EIS recognized the potential for future conveyance of some industrial-designated lands to the local community for economic development. The CLUP was reaffirmed in a Supplement Analysis to the HCP–EIS (DOE/EIS–0222–SA–01; June 2008) and amended ROD (73 FR 55824; September 26, 2008).

The EA will analyze the reasonably foreseeable environmental effects associated with the probable future uses of lands in the analysis area, based upon industry targets described in the TRIDEC proposal, including warehousing and distribution; research and development; technology manufacturing; food processing and agriculture; and ''back office'' (i.e., business services). The proposed action may affect floodplains and wetlands, so this Notice of Intent also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements.

DATES: DOE invites public comment on the scope of this Hanford Site Land Conveyance EA during a 30-day public scoping period beginning September 19, 2012 and ending on October 19, 2012. DOE will consider all comments received or postmarked by the end of the scoping period to define the scope of this EA. Comments received or postmarked after the end date will be considered to the extent practicable. A public scoping meeting is scheduled for October 10, 2012.

ADDRESSES: The public scoping meeting will be held from 5:30 p.m. to 8:30 p.m. at the Richland Public Library in Richland, Washington. DOE will issue stakeholder and media notifications and publish an additional notice on the date, time and location of the scoping meeting in the local newspaper before the scheduled meeting. DOE will notify stakeholders and the media of any changes concerning the scoping meeting.

Scoping comments may be submitted by regular mail and addressed as follows: Ms. Paula Call, NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, MSIN A2–15, Richland, WA 99352.

Scoping comments may also be submitted by email to *landconveyanceEA@rl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For information on DOE's proposed action, contact Ms. Call by mail or email as noted above in **ADDRESSES**, or at 509–376–2048.

For general information concerning DOE's NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0119, Telephone: 202–586–4600, Fax: 202–586–7031, Voice mail message: 1–800–472–2756, Email: *asknepa@hq.doe.gov.*

Additional information regarding DOE's NEPA activities is available on the DOE NEPA Web site at *http://energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

Background

Situated along the Columbia River in southeastern Washington, DOE's 586-square-mile Hanford Site is undergoing extensive efforts to clean up contamination resulting from past nuclear defense research and development activities dating back to World War II. DOE has real property conveyance authority under a number of different laws including the Atomic Energy Act of 1954 (AEA). Section 161(g) of the AEA authorizes DOE to convey real property by sale or lease to another party.

DOE may hold harmless and indemnify a person or entity to whom real property is conveyed against liability for pre-existing contamination that may have resulted from DOE (or predecessor agency) activities at the site. Such indemnification is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h)(3)(A)(ii)(II); EPA's ''Policy Towards Landowners and Transferees of Federal Facilities'' (EPA, 1997); and DOE regulation 10 Code of Federal Regulations (CFR) part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development.

Significant progress has been made in cleanup of the Hanford Site, particularly as a result of the American Recovery and Reinvestment Act (111th Congress: American Recovery and Reinvestment Act of 2009). Accordingly, there is heightened focus in the local community on the need to transition away from an economy focused largely on DOE and Hanford activities to one based on private sector or other non-DOE Federal agencies. As the designated CRO for the Hanford Site, TRIDEC's charter is to promote these economic development goals. Beginning in 1996, and continuing in 2000, 2003, 2004, and 2005, TRIDEC commissioned studies to develop strategies and target industries that would be most appropriate for future economic development. TRIDEC also engaged in marketing and recruitment activities during this time period. Industries that were targeted in these studies and recruitment efforts included warehousing and distribution; research and development; technology manufacturing; food processing and agriculture; and ''back office'' (i.e., business services).

In February 2011, the Secretary of Energy established a DOE-wide Task Force on an Asset Revitalization Initiative (ARI), to initiate a comprehensive review of DOE assets and possible disposition paths. DOE submitted its report to Congress on the progress of this Initiative in August 2011 (Asset Revitalization Initiative Report to Congress, Department of Energy, August 2011). Also in 2011, TRIDEC submitted a request to DOE for title transfer of approximately 1,641 acres of undeveloped land located near the southeastern boundary of the Hanford Site, pursuant to 10 CFR part 770. TRIDEC's proposal states its intent to work with the City of Richland, the Port of Benton, and Benton County to establish the property as an Industrial Development and Energy Park. The proposal states that TRIDEC may subsequently transfer ownership either to a private user or to one of its public agency partners, such as the City of Richland.

Purpose and Need for Agency Action

TRIDEC, the recognized CRO for the Hanford Site, has requested transfer of 1,641 acres of Hanford lands for economic development. Consistent with the Hanford CLUP which designates the subject lands for industrial use, and the HCP–EIS which recognized the potential for future conveyance of industrial-designated lands to the local community for economic development, DOE will consider the TRIDEC request for the transfer of 1,641 acres of Hanford lands to support local economic development.

Proposed Action and Alternatives

In response to the TRIDEC proposal, DOE proposes to convey approximately 1,641 acres of Hanford land to the CRO for the purposes of facilitating local economic development and assisting the local community in the transition away from an economy focused largely on DOE and Hanford-related funding. Conveyance of the land could include title transfer, lease, easement, license, or a combination of these realty actions. It is important to note that at this time, no specific end users or development proposals have been identified or proposed. In addition to reasonable alternatives that may be identified during public scoping, the EA will analyze two alternatives: the No Action Alternative and the Proposed Action Alternative. Under the No Action Alternative, DOE would retain ownership and management of the land.

Under the Proposed Action Alternative, DOE would convey approximately 1,641 acres of undeveloped land in response to the CRO's land transfer request. The CRO plans to use, market, lease, sell, or otherwise develop the land to conduct industrial development and commercial activities that are consistent with local zoning and comprehensive land use plans. These lands are generally bounded by Horn Rapids Road and Highway 240 to the south; Route 10 to the west; and Stevens Drive or Route 4 South to the east and north, and are located near the northeast boundary of the City of Richland. The TRIDEC request includes two parcels: (1) A 1,341-acre parcel located northwest of the intersection of Horn Rapids Road and Stevens Drive, with the west and north boundaries adjacent to the Hanford Firing Range and an active borrow pit; and (2) a 300-acre parcel located ½-mile north of the 1,341-acre parcel, separated from the 1,341-acre parcel by the active borrow pit. DOE anticipates that there may be continuing mission needs, such as security and human health and safety buffer zones, on portions of the lands requested by TRIDEC. Therefore, the EA analysis will consider for conveyance the parcels requested by TRIDEC as well as the adjacent 2,772-acre parcel roughly bounded by the 1,341-acre parcel to the south, the Hanford Firing Range to the west, the Hanford Railroad and Route 4 South to the east, and a straight line extending from the northeastern tip of the Hanford Firing Range to the Hanford Railroad to the north. The EA will evaluate whether to convey approximately 1,641 acres of the total 4,413 acres included in the analysis area.

Consistent with the CLUP analyses of reasonably foreseeable environmental effects associated with the probable future use of the lands, DOE intends to base its analyses in the EA on the previous TRIDEC target industry studies and TRIDEC's intent to market the land as an Industrial Development and Energy Park including:

(i) Warehousing&Distribution—such as manufactured parts/materials distribution, food/agricultural;

(ii) Research and Development—such as scientific research, software, data security, computation, energy, environmental, or biotechnology;

(iii) Technology Manufacturing—such as defense manufacturing, sensor manufacturing, or medical devices;

(iv) Food/Agriculture—such as wine, food processing, or agricultural products;

(v) ''Back Office'' (i.e. business services)—such as call centers, administrative processing, or data processing.

DOE's analysis of the Proposed Action Alternative will also assume that future uses would be developed in accordance with local zoning and current City of Richland (2008) and Benton County (2006) comprehensive land use plans that were developed to comply with the Washington State Growth Management Act. In order to identify environmental effects that could result from implementation of the proposed action, DOE intends to use analytical assumptions in the EA that would tend to maximize estimates of reasonably foreseeable environmental impacts associated with footprint, infrastructure, utilities, emissions, construction of buildings, projected workforce and traffic, water usage, and similar requirements.

Preliminary Identification of Environmental Issues

Issues tentatively identified for analysis in the EA include the reasonably foreseeable effects associated with: land use; ecological resources; cultural and historic resources; geology and soils; water resources; climate and air quality; noise; transportation; accidents and intentional destructive acts; socioeconomics; environmental justice; visual resources; waste management; infrastructure; and human health and safety. The proposed action may affect floodplains and wetlands. This NOI serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements (10 CFR part 1022). The EA will include an assessment of potential impacts to floodplains and wetlands, and if required, a statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022). The analyses will identify the environmental effects that are reasonably foreseeable to the local region as well as to ongoing DOE missions and activities at the Hanford Site. The analysis will also consider cumulative environmental effects. The EA will also explore potential mitigation measures that could result in imposing deed restrictions aimed at precluding or minimizing environmental consequences.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. Federal agencies are encouraged to coordinate compliance with Section 106 of the NHPA with any steps taken to meet the requirements of NEPA. In the interest of being comprehensive and less duplicative, DOE plans to coordinate the NEPA review and Section 106 compliance processes for the preparation of this EA to the greatest extent possible.

Scoping Process

DOE has established a 30-day scoping period during which Federal agencies, State, Tribal and local governments, special interest groups, concerned citizens and any other interested parties are invited to comment on the scope of the EA, including specific issues that should be addressed in the EA. In keeping with DOE's plans to coordinate the NEPA and NHPA Section 106 requirements, DOE also invites comments regarding the identification of historic properties governed by the NHPA, and any potential adverse effects that may result from the proposed action, along with suggested actions DOE might take to mitigate any such adverse effects. A public meeting will be held during the scoping period. At the public meeting, DOE will provide an overview of the proposed action, an informal question-and-answer period to clarify the information presented, and an opportunity for individuals to provide formal written or oral statements. DOE will consider all comments received during the scoping period in preparing the draft EA.

If at any time during preparation of the EA DOE determines that an environmental impact statement (EIS) is needed, DOE will issue a revised Notice of Intent (NOI) to prepare an EIS in the **Federal Register**. In that case, the current scoping process will serve as the scoping process that normally would follow an NOI to prepare an EIS. Accordingly, DOE will consider any comments on the scope of the EA received during this scoping process in preparing the EIS.

Issued in Richland, WA on September 12, 2012.

Matt McCormick,

Manager, Richland Operations Office.

[FR Doc. 2012–23099 Filed 9–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

SunShot Prize: Race to the Rooftop

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

ACTION: Notice; Release of competition rules and processes to compete.

SUMMARY: This notice announces the release of the SunShot Prize: Race to the Rooftop competition. This competition offers $10 million in prizes to those who can lower the non-hardware installation cost of rooftop solar energy systems.

DATES: Registration opened on September 12, 2012, and will run through October 31, 2014. Participants can submit Phase I materials through December 31, 2014, and Phase II materials through December 31, 2015.

ADDRESSES: Interested persons are encouraged to learn about the SunShot Prize: Race to the Rooftop competition rules at *eere.energy.gov/solar/sunshot/prize.html.* Teams that wish to enter the competition can register at *eere.energy.gov/solar/sunshot/prize.html.* Questions about the prize competition can be sent to:

Email: SunShot.Prize@ee.doe.gov.

Mail: Solar Energy Technologies Program, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Minh Le, Solar Energy Technologies Program, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Email: *SunShot.Prize@ee.doe.gov*

SUPPLEMENTARY INFORMATION: The America COMPETES Reauthorization Act of 2010, Public Law 111–358, enacted January 4, 2011, authorizes, among other things, Federal agencies to issue competitions to stimulate innovations in technology, education, and science. The $10 million SunShot Prize: Race to the Rooftop competition challenges the ingenuity of America's businesses and communities to make it faster, easier, and cheaper to install rooftop solar energy systems. Successful competitors will deploy domestically and in two phases, at least 6,000 new rooftop photovoltaic (PV) installations

at an average pre-subsidy non-hardware cost of $1 per watt. Winners will break this significant price barrier, considered to be unachievable a decade ago, and prove that they can repeatedly achieve a $1 per watt non-hardware cost using innovative, verifiable processes and business practices.

As required by the America COMPETES Reauthorization Act of 2010, the Secretary of Energy has approved this competition.

Today's notice announces the SunShot Prize and the release of prize rules.

Issued in Washington DC, on September 12, 2012.

Rachel Tronstein,

Deputy Director, SunShot Initiative, Energy Efficiency and Renewable Energy .

[FR Doc. 2012–23098 Filed 9–18–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–15–000]

Commission Information Collection Activities (FERC–546); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–546 (Certificated Filings: Gas Pipeline Rates) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 40438, 7/9/2012) requesting public comments. FERC received no comments on the FERC–546 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by October 19, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0155, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–15–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–546, Certificated Filings: Gas Pipeline Rates.

OMB Control No.: 1902–0155.

Type of Request: Three-year extension of the FERC–546 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission reviews the FERC–546 materials to decide whether to determine an initial rate associated with an application for a certificate under NGA Section 7(c). It reviews FERC–546 materials in 4(f) storage applications to evaluate market power and decide whether to grant, deny, or condition market based rate authority for the applicant. The Commission uses the FERC–546 information to monitor jurisdictional transportation, natural gas storage, and unbundled sales activities of interstate natural gas pipelines and Hinshaw [1] pipelines. In addition to fulfilling the Commission's obligations under the NGA, the FERC–546 enables the Commission to monitor the activities and evaluate transactions of the natural gas industry, ensure competitiveness, and improved efficiency of the industry's operations. In summary, the Commission uses the FERC–546 information to:

- Ensure adequate customer protections under section 4(f) of the NGA;
- Review rate and tariff changes by natural gas companies for the transportation of gas, natural gas storage services;
- Provide general industry oversight;
- And supplement documentation during its audits process.

Failure to collect this information would prevent the Commission from being able to monitor and evaluate transactions and operations of interstate pipelines and perform its regulatory functions.

Type of Respondents: Pipeline companies and storage operators.

Estimate of Annual Burden: [2] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–546 (IC12–15–000): CERTIFICATED RATE FILINGS (GAS PIPELINE RATES)

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Pipeline Companies	11	1	11	40	440

[1] Hinshaw pipelines are those that receive all out-of-state gas from entities within or at the boundary of a state if all the natural gas so received is ultimately consumed within the state in which it is received, 15 U.S.C. 717(c). Congress concluded that Hinshaw pipelines are ''matters primarily of local concern,'' and so are more appropriately regulated by pertinent state agencies rather than by FERC. The Natural Gas Act section 1(c) exempts Hinshaw pipelines from FERC jurisdiction. A Hinshaw pipeline, however, may apply for a FERC certificate to transport gas outside of state lines.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–546 (IC12–15–000): CERTIFICATED RATE FILINGS (GAS PIPELINE RATES)—Continued

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Storage Operators	2	1	2	350	700
Total	13	N/A	13	N/A	1,140

The total estimated annual cost burden to respondents is $78,669.97 [1,140 hours ÷ 2,080 [3] hours/year = 0.54807 * $143,540/year [4] = $78,669.97].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23030 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Ic12–19–000]

Commission Information Collection Activities (FERC–732); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets.

DATES: Comments on the collection of information are due November 19, 2012.

ADDRESSES: You may submit comments (identified by Docket No. IC12–19–000) by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp.*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–732 and Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets.

*OMB Control No.:*1902–0245.

Type of Request: 18 CFR part 42 provides the reporting requirements of FERC–732 as they pertain to long-term transmission rights. To implement section 1233 [1] of the Energy Policy Act of 2005 (EPAct 2005),[2] the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines.

The FERC–732 regulations require that transmission organizations (that are public utilities with one or more organized electricity markets) choose one of two ways to file:

- File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC.
- File an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines.

Additionally, the Commission requires each transmission organization to make its transmission planning and expansion procedures and plans available to the public.

FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005.

The Commission intends to include the FERC–732 and all of its applicable requirements within FERC–516 (OMB Control No. 1902–0096). The Commission will ensure complete renewal (to include publishing all public notifications and receiving Office of Management and Budget approval) of FERC–732 information collection. After the collection is renewed, the Commission will seek to administratively incorporate FERC–732 information collection requirements into FERC–516. Finally, the Commission will discontinue the vacant FERC–732 information collection.

Type of Respondents: Public utility with one or more organized electricity markets.

Estimate of Annual Burden: [3] The Commission estimates the total Public Reporting Burden for this information collection as:

[3] 2080 hours/year = 40 hours/week * 52 weeks/year

[4] Average annual salary per employee in 2012.

[1] 16 USC 824 et al.

[2] Added new section 217 (16 USC 824Q) to the Federal Power Act (FPA).

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 CFR 1320.3.

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Public utility with +1 organized electricity markets	1	1	1	1,180	1,180

The total estimated annual cost burden to respondents is $81,431.68 [1,180 hours ÷ 2080 hours per year = 0.56731 * 143,540/years = $81,431.68]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23022 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 460–066]

Tacoma Power; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 460–066.

c. *Date Filed:* July 5, 2012.

d. *Applicant:* Tacoma Power.

e. *Name of Project:* Cushman Hydroelectric Project.

f. *Location:* The Cushman Hydroelectric Project is located on the North Fork of the Skokomish River in Mason County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Paul Hickey, License Implementation Coordinator, Tacoma Power, 3628 South 35th Street, Tacoma, Washington 98409–3192; Phone: (253) 502–8692.

i. *FERC Contact:* Patricia A. Grant at (312) 596–4435, or email: *patricia.grant@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* October 11, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–460–066) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* As required by article 424 of the license, Tacoma Power requests Commission approval of a proposed shoreline management plan (SMP) for the project. The SMP defines shoreline management classifications for the shorelines within the project boundary, identifies allowable uses and prohibited uses within the shoreline areas, and describes the shoreline use evaluation process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–460). You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening;

and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23034 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP12–509–000; PF11–2–000]

Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, FLNG Liquefaction 3, LLC; Notice of Application

Take notice that on August 31, 2012, Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (collectively referred to as Freeport) filed an application pursuant to section 3(a) of the Natural Gas Act (NGA) and Parts 153 and 380 of the Commission's regulations, requesting authorization to site, construct, own, and operate natural gas liquefaction and export facilities located on Quintana Island, Brazoria County, Texas. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

The proposed natural gas liquefaction and export facilities will be constructed adjacent to the existing Freeport LNG Development, L.P.'s liquefied natural gas (LNG) import terminal on Quintana Island (Terminal). The main liquefaction equipment will consist of three liquefaction trains, each capable of producing a nominal 4.4 million metric tons of LNG per annum (mtpa), for a total capacity of 13.2 mtpa. In addition, Freeport also proposes to construct natural gas pretreatment facilities, located approximately 2.5 miles north of the Terminal, and appurtenant structures to support the natural gas liquefaction and export operations.

Any questions regarding this application should be directed to John B. Tobola, Freeport LNG Development, L.P., 333 Clay Street, Suite 5050, Houston, Texas 77002, or by calling (713) 980–2888; or Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, New York 10103, (212) 318–3009, *ltonery@fulbright.com.*

On January 5, 2011, the Commission staff granted Freeport's request to use the pre-filing process and assigned Docket No. PF11–2–000 to staff activities involving the proposed natural gas liquefaction and export project. Now, as of the filing of this application on August 31, 2012, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP12–509–000, as noted in the caption of this Notice.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 3, 2012

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23029 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 460–066]

Tacoma Power; Errata Notice

On September 11, 2012, the Commission issued a *Notice of*

Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests for the Cushman Hydroelectric Project (FERC No. 460–066). The notice of application is now revised to read as follows:

(1.) Paragraph l. is changed to read:

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–460). You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h. above.

Dated: September 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23023 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2355–018]

Exelon Generation Company, LLC; Notice of Application Tendered for Filing With the Commission and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License

b. *Project No.:* 2355–018

c. *Date Filed:* August 29, 2012

d. *Applicant:* Exelon Generation Company, LLC

e. *Name of Project:* Muddy Run Pumped Storage Project

f. *Location:* On Muddy Run, a tributary to the Susquehanna River, in Lancaster and York Counties, Pennsylvania. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)–825(r)

h. *Applicant Contact:* Colleen Hicks, Manager, Regulatory and Licensing, Hydro, Exelon Power, 300 Exelon Way, Kennett Square, PA 19348, at (610) 765–6791 or email at *Colleen.Hicks@exeloncorp.com* and Kathleen Barròn, Vice President, Federal Regulatory Affairs and Wholesale Market Policy, Exelon Corporation, 101 Constitution Avenue, Washington, DC 20001, at (202) 347–7500 or email at *Kathleen.Barron2@exeloncorp.com.*

i. *FERC Contact:* Emily Carter, (202) 502–6512 or *emily.carter@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The Muddy Run Pumped Storage Project consists of four dams. The main dam is a rock-filled structure across the Muddy Run ravine with a central impervious core, a maximum height of approximately 260 feet and a total length of 4,800 feet. The east dike is a zoned-earth and rock-filled embankment with a maximum height of approximately 12 feet and a total length of 800 feet. The recreation pond dike is a zoned-earth and rock-filled embankment with a maximum height of approximately 90 feet and a total length of 750 feet. The canal embankment has a maximum height of approximately 35 feet. Total storage in the 900-acre Muddy Run reservoir (upper reservoir) is approximately 60,000 acre-feet and the total useable storage is approximately 35,500 acre-feet at the maximum pool elevation of 520 feet. The maximum pool elevation is approximately 411 feet above the normal elevation of Conowingo pond. Conowingo pond (lower reservoir) has a surface area of 9,000 acres and design storage of approximately 310,000 acre-feet at the normal full pool elevation of 109.2 feet.

The main spillway is a non-gated concrete ogee-type structure that is 200 feet long, 20 feet high and with crest elevation of 521 feet, which is directed to a vegetated natural ravine. The recreation pond spillway is a rock-cut channel approximately 140 feet wide and with a crest elevation of 520 feet.

The power intake facilities consist of four cylinder gates with trash racks in a cylindrical tower. Each intake supplies two units. Each intake leads to a 430-foot-deep vertical shaft then to a horizontal power tunnel, which divides into two sections. The power tunnel sections transition to a penstock that leads to one of the eight reversible pump-turbine units in the powerhouse. The power plant is constructed of concrete and is 133 feet wide and 600 feet long. It houses eight Francis turbines each equipped with a 100–MW generator. The powerhouse turbines each have a hydraulic capacity of 4,000 cfs, for a total discharge capacity from the powerhouse of 32,000 cfs. The pumping capacity of the pump turbines is 3,500 cfs each for a total powerhouse pumping capability of 28,000 cfs. Water flowing through the turbines is discharged via the draft tubes into the Susquehanna River adjacent to the powerhouse. The units are equipped with trash racks between the draft tube outlet and the river.

Electricity generated at the project is transmitted by two individual 220-kV transmission lines extending from the project switching station approximately 4.25 miles to the Peach Bottom Atomic Power Station (PBAPS) North Substation located in York County.

The Muddy Run Project has an authorized nameplate generating capacity of 800 MW and generates an average of 1,610,611 MWh annually. Exelon is not proposing any new or upgraded facilities or structural changes to the project at this time. Also, Exelon has engaged interested stakeholders to participate in the development of a comprehensive settlement agreement based on collaborative negotiation of specific terms and conditions for the new Muddy Run license.

l. Locations of the Application: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule: A preliminary Hydro Licensing Schedule will be provided in a subsequent notice.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23024 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4362–000]

Inman Mills; Notice of Authorization for Continued Project Operation

The Riverdale Hydroelectric Project No. 4362 is located on the Enoree River, in Spartanburg County, South Carolina. The minor license for Project No. 4362 was issued in September 1982 for a period ending August 31, 2012. The deadline for filing applications for a subsequent license was August 31, 2010. Inman Mills, the licensee for Project No. 4362, did not file an application for a subsequent license.[1] On August 31, 2010, Lockhart Power Company filed an application for a subsequent license for the project.[2]

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1) (2006), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If, as is the case here, the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c) (2006), and as set forth at 18 CFR 16.21(b), if, as is also the case here, the licensee of such project has not filed an application for a subsequent license, the licensee may be required to continue to operate the project in accordance with the terms and conditions of the license after the minor license expires, until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

Notice is hereby given that Inman Mills is authorized to continue operation of the Riverdale Hydroelectric Project, until such time as the Commission issues someone else a license for the project or otherwise orders disposition of the project.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23025 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

[1] In 2006, Commission staff approved transfer of the license from Inman Mills to Riverdale Development Venture, LLC. 115 FERC ¶ 62,076 (2006). However, the 2006 order was rescinded in 2008 because the requirements for the transfer were never completed. 122 FERC ¶ 62,204 (2008).

[2] The application, docketed Project No. 13590, is pending before the Commission.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2172–007; *ER10–2172–008; ER10–2179–009; ER10–2179–011; ER11–2016–002; ER11–2016–003; ER10–2184–007; ER10–2184–008; ER10–2183–004; ER10–2183–005; ER10–1048–004; ER10–1048–005; ER10–2176–008; ER10–2176–009; ER10–2192–007; ER10–2192–008; ER11–2056–001; ER11–2056–002; ER10–2178–008; ER10–2174–007; ER10–2174–008; ER11–2014–004; ER11–2014–005; ER11–2013–005; ER11–2013–004; ER10–3308–006; ER10–3308–007; ER10–1017–003; ER10–1017–004; ER10–1020–003; ER10–1020–004; ER10–1145–003; ER10–1145–004; ER10–1144–002; ER10–1144–003; ER10–1078–003; ER10–1078–004; ER10–1079–003; ER10–1079–004; ER10–1080–003; ER10–1080–004; ER11–2010–004; ER11–2010–005; ER10–1081–003; ER10–1081–004; ER10–2180–007; ER10–2180–008; ER11–2011–003; ER11–2011–004; ER11–2009–003; ER11–2009–004; ER11–3989–002; ER11–3989–003; ER10–1734–004; ER10–1734–005; ER10–2181–009; ER10–2181–011; ER10–1143–003; ER10–1143–004; ER10–2182–009; ER10–2182–011; ER11–2007–002; ER11–2007–003; ER12–1223–002; ER12–1223–003; ER11–2005–004; ER11–2005–005; ER10–2178–007.*

Applicants: Constellation Energy Commodities Group, Inc., R.E. Ginna Nuclear Power Plant, LLC, PECO Energy Company, Baltimore Gas and Electric Company, Wind Capital Holdings, LLC, CR Clearing, LLC, Exelon New England Power Marketing, LP, Exelon Framingham, LLC, Exelon New Boston, LLC, Exelon West Medway, LLC, Exelon Wyman, LLC, Exelon Generation Company, LLC, Exelon Energy Company, Calvert Cliffs Nuclear Power Plant LLC, CER Generation, LLC, Commonwealth Edison Company, Constellation NewEnergy, Inc., CER Generation II, LLC, Constellation Energy Commodities Group Maine, LLC, Handsome Lake Energy, LLC, Nine Mile Point Nuclear Station, LLC, Constellation Mystic Power, LLC, Cassia Gulch Wind Park, LLC, Michigan Wind 1, LLC, Harvest Windfarm, LLC, Exelon Wind 4, LLC, Criterion Power Partners, LLC, Cow Branch Wind Power, L.L.C., Michigan Wind 2, LLC, MXenergy Electric Inc., Wildcat Wind, LLC, Tuana Springs Energy, LLC, Constellation Paper Source Generation, Inc.

Description: Second Supplement to Notification of Change in Status of Baltimore Gas & Electric Company, *et al.*

Filed Date: 8/1/12.

Accession Number: 20120801–5137.

Comments Due: 5 p.m. ET 10/2/12.

Docket Numbers: ER12–2217–004.

Applicants: Power Dave Fund LLC.

Description: Compliance Filing 091212 to be effective 9/12/2012.

Filed Date: 9/12/12.

Accession Number: 20120912–5029.

Comments Due: 5 p.m. ET 10/3/12.

Docket Numbers: ER12–2314–000.

Applicants: Spinning Spur Wind LLC.

Description: Supplemental Information of Spinning Spur Wind, LLC.

Filed Date: 9/12/12.

Accession Number: 20120912–5100.

Comments Due: 5 p.m. ET 9/26/12.

Docket Numbers: ER12–2442–001.

Applicants: PJM Interconnection, L.L.C.

Description: Errata to Original Service Agreement No. 3381—Docket No. ER12–2442–000 to be effective 7/10/2012.

Filed Date: 9/12/12.

Accession Number: 20120912–5092.

Comments Due: 5 p.m. ET 10/3/12.

Docket Numbers: ER12–2615–000.

Applicants: Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.

Description: SA 2475 MidAmerican-Modern Hydro WDS to be effective 6/26/2012.

Filed Date: 9/12/12.

Accession Number: 20120912–5028.

Comments Due: 5 p.m. ET 10/3/12.

Docket Numbers: ER12–2616–000.

Applicants: PJM Interconnection, L.L.C.

Description: Ministerial Clean-Up Filing re OATT Section 230.3 due to Overlapping Filings to be effective 7/18/2012.

Filed Date: 9/12/12.

Accession Number: 20120912–5046.

Comments Due: 5 p.m. ET 10/3/12.

Docket Numbers: ER12–2616–001.

Applicants: PJM Interconnection, L.L.C.

Description: Errata to Transmittal Letter re Ministerial Clean-Up Filing of OATT Sec 230.3 to be effective 7/18/2012.

Filed Date: 9/12/12.

Accession Number: 20120912–5059.

Comments Due: 5 p.m. ET 10/3/12.

Docket Numbers: ER12–2617–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: SA 2431 Glacial Ridge-GRE G549 GIA to be effective 9/13/2012.

Filed Date: 9/12/12.

Accession Number: 20120912–5053.

Comments Due: 5 p.m. ET 10/3/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–51–000.
Applicants: MidAmerican Energy Company.
Description: Amendment to MidAmerican Energy Company's Application.
Filed Date: 9/11/12.
Accession Number: 20120911–5000.
Comments Due: 5 p.m. ET 9/21/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–23046 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–134–000.
Applicants: NRG Energy, Inc, GenOn Energy, Inc.
Description: NRG Energy, Inc *et al.* submits additional information in support of the application pursuant to Section 203(a)(1) *et al.*
Filed Date: 9/10/12.
Accession Number: 20120911–0249.
Comments Due: 5 p.m. ET 10/9/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–108–000.
Applicants: Prairie Rose Wind, LLC.
Description: Notice of Self-certification of Exempt Wholesale Generator Status of Prairie Rose Wind, LLC.
Filed Date: 9/11/12.
Accession Number: 20120911–5102.
Comments Due: 5 p.m. ET 10/2/12.

Docket Numbers: EG12–109–000.
Applicants: Prairie Rose Transmission, LLC.
Description: Notice of Self-certification of Exempt Wholesale Generator Status of Prairie Rose Transmission, LLC.
Filed Date: 9/11/12.
Accession Number: 20120911–5103.
Comments Due: 5 p.m. ET 10/2/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2606–002.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance Filing per 7/11/2012 Order in EL12–50–000 (sections eff 10/1/2012) to be effective 10/1/2012.
Filed Date: 9/10/12.
Accession Number: 20120910–5160.
Comments Due: 5 p.m. ET 10/1/12.

Docket Numbers: ER12–2611–000.
Applicants: NorthWestern Corporation.
Description: SA 646—SGIA with NPS re Mammoth Project to be effective 9/12/2012.
Filed Date: 9/11/12.
Accession Number: 20120911–5080.
Comments Due: 5 p.m. ET 10/2/12.

Docket Numbers: ER12–2612–000.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 130 Concurrence in TEP RS No. 321 SRSG Participation Agreement to be effective 12/28/2011.
Filed Date: 9/11/12.
Accession Number: 20120911–5088.
Comments Due: 5 p.m. ET 10/2/12.

Docket Numbers: ER12–2613–000.
Applicants: Southern California Edison Company.
Description: Amended SGIA and DSA to 570 E. Mill St San Bernardino Roof Top Solar Project to be effective 9/13/2012.
Filed Date: 9/12/12.
Accession Number: 20120912–5001.
Comments Due: 5 p.m. ET 10/3/12.

Docket Numbers: ER12–2614–000.
Applicants: Dynamo Power LLC.
Description: Market-Based Rates Tariff to be effective 9/12/2012.
Filed Date: 9/12/12.
Accession Number: 20120912–5002.
Comments Due: 5 p.m. ET 10/3/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–55–000.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Company Application for Authorization of Issuance of Short-Term Debt Securities Under Section 204 of the Federal Power Act.
Filed Date: 9/12/12.
Accession Number: 20120912–5012.
Comments Due: 5 p.m. ET 10/3/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–23045 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–1029–000.
Applicants: Dogwood Energy LLC, Unified Government of Wyandotte County/K.
Description: Request for Temporary Waiver of Dogwood Energy LLC and Unified Government of Wyandotte County/Kansas City, Kansas.
Filed Date: 9/7/12.
Accession Number: 20120907–5145.
Comments Due: 5 p.m. e.t. 9/19/12.

Docket Numbers: RP12–1032–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: CEGT LLC—Negotiated Rate Filing—September 2012 to be effective 9/10/2012.
Filed Date: 9/12/12.

Accession Number: 20120912–5122.
Comments Due: 5 p.m. e.t. 9/24/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–900–001.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Compliance with RP12–900–000.
Filed Date: 9/12/12.
Accession Number: 20120912–5027.
Comments Due: 5 p.m. e.t. 9/24/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2012–23079 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–496–000]

Colorado Interstate Gas Company, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed High Plains 2013 Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the High Plains 2013 Expansion Project involving construction and operation of facilities by Colorado Interstate Gas Company, L.L.C. (CIG) in Weld County, Colorado. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on October 11, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

CIG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

CIG proposes to construct and operate the High Plains 2013 Expansion Project in response to demand for additional takeaway capacity from the Denver-Julesburg (DJ) Basin to the Cheyenne Hub located in Weld County, Colorado. The High Plains 2013 Expansion Project would provide initially about 225,000 dekatherms per day (Dth per day) and over time, may become capable of transporting up to 600,000 dekatherms per day of natural gas from a new natural gas processing plant to an interconnect with CIG's exising High Plains System.

The High Plains 2013 Expansion Project would consist of the following facilities:

- An approximate 7.75 mile 24-inch-diameter lateral pipeline (Lancaster Lateral) connecting natural gas production and processing facilities in the DJ Basin to a connection with its existing High Plains System in Weld County, Colorado;
- An overpressure protection facility and pigging facilities at the interconnection of the proposed Lancaster Lateral and CIG's High Plains System;
- Two new receipt meter stations used to measure new sources of supply into the existing High Plains System;
- Modify an existing meter station known as the Flying Hawk Meter Station which connects the High Plains System with the Wyoming Interstate Company, L.L.C. System at the Cheyenne Hub to make the meter bi-directional; and
- Modifying an existing block valve on the High Plains System by installing pressure control equipment.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 125.7 acres of land for the aboveground facilities and the pipeline. Following construction, CIG would maintain about 57.9 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 23.2 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all

[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA [3]. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CIG. This preliminary list of issues may be changed based on your comments and our analysis.

- The project could potentially impact federally listed endangered or threatened species.
- Several residences along the pipeline route may by impacted by noise from horizontal directional drilling.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 11, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP12–496–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP12–496). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23032 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6492–009]

Hardins Manufacturing Company, Hardins Resources Company; Notice of Transfer of Exemption

1. By email filed April 23, 2012, Hardins Manufacturing Company informed the Commission that its exemption from licensing for the Hardins Hydro-Power Project No. 6492, originally issued December 8, 1982,[1] has been transferred to Hardins Resources Company. The project is located on the South Fork, Catawba River in Gaston County, North Carolina. The transfer of an exemption does not require Commission approval.

2. Hardins Resources Company, located at 11800 Henderson Road, Clifton, VA 20124 is now the exemptee of the Hardins Hydro-Power Project No. 6492.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23026 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 21 FERC ¶ 62,400, Order Granting Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2614–000]

Dynamo Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Dynamo Power LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is October 3, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–23044 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14436–000]

Kaweah River Power Authority; Errata Notice

On August 22, 2012, the Commission issued a Notice in the above-referenced proceeding. *Notice of Preliminary Permit Application Accepted For Filing And Soliciting Comments, Motions To Intervene, And Competing Applications,* August 22, 2012. (August 22, 2012). The county location of the project was incorrectly identified as Tulare County, Nevada. The correct county location of the project is Tulare County, California.

Dated: September 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23021 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14374–000]

American River Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 20, 2012, American River Power, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the Brookville Hydroelectric Water Power Project No. 14374, to be located at the existing Brookville Lake Dam on the Whitewater River, near the town of Brookville in Franklin County, Indiana. The Brookville Lake Dam is owned by the United States government and operated by the United States Army Corps of Engineers.

A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) One new 60-foot-long by 30-foot-wide by 30-foot-high reinforced concrete powerhouse, containing three 3-megawatt (MW) turbines for a total capacity of 9 MW; (2) a new 220-foot-long by 9-foot-diameter steel penstock; (3) a new 35-foot-long by 35-foot-wide substation; (4) a new 400-foot-long, 12.5 to 34.5-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated annual generation of 55 gigawatt-hours.

Applicant Contact: Mr. John Henry, 726 Eldridge Avenue, Collingswood, NJ 08107–1708; (856) 240–0707.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14374) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23027 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–506–000]

Trunkline Gas Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on August 30, 2012, Trunkline Gas Company, L.L.C. (Trunkline), P.O. Box 4967, Houston, Texas, 77210, filed in Docket No. CP12–506–000, a Prior Notice request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon Trunkline's existing compressor unit located in Jackson County, Texas. Specifically, Trunkline propose to abandon, in place, the existing 1,675 horsepower compressor unit and related auxiliary equipment at the Edna Compressor Station. Due to the construction of the Eagle Plant Interconnect and its delivery pressure, Trunkline has determined that the compression at the Edna Compressor Station will no longer be needed. Trunkline has not operated the Edna Compressor Station during the last twelve months and no service to existing customers will be impacted, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Stephen T. Veatch, Senior Director of Certificates and Tariffs, Trunkline Gas Company, L.L.C., 5051 Westheimer Road, Houston, Texas 77056, or call (713) 989–2024, or fax (713) 989–1176, or by email: *Stephen.veatch@sug.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: September 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23033 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–505–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

Take notice that on August 30, 2012, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP12–505–000, a prior notice request, pursuant to sections 157.205, 157.208 and 175.216 of the Commission's Regulations under the Natural Gas Act, and Transco's blanket certificate issued in Docket No. CP82–402, for authorization to abandon two injection and withdrawal (I/W) wells, cut, cap, abandon and retire in place its related laterals, taps and meters located in Kankakee County, Illinois and abandon in place a 1,158 foot 12-inch pipeline along with related meter, tap and ball valve located in Kankakee County, Illinois. In addition, Natural states that the two I/W wells proposed to be abandoned are to be subsequently converted to observation wells, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, or via telephone at (630) 725–3070, or by email *bruce_newsome@kindermorgan.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: September 12, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23028 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–1021–000]

Columbia Gas Transmission, LLC; Notice of Offer of Settlement

Take notice that on September 4, 2012, Columbia Gas Transmission, LLC (Columbia) filed a Stipulation and Agreement (Settlement), including *pro forma* tariff records, pursuant to 18 CFR 385.602 (2012) to reduce its base rates for transportation service and address numerous complex issues arising out of recent and anticipated changes in pipeline safety requirements, Columbia's dedication to pipeline safety and reliability of service, and the aging nature of Columbia's system.

Columbia states that the settlement provides for the implementation of a new Capital Cost Recovery Mechanism (CCRM), which will allow Columbia to recover, through an additive capital demand rate, its revenue requirement for capital investments made under Columbia's long-term plan to modernize its interstate transmission system. The Settlement also establishes: (1) Revised transmission depreciation and negative salvage rates effective January 1, 2012 through December 31, 2024; (2) a revenue sharing mechanism pursuant to which Columbia will share 75% of specified revenues earned in excess of an annual threshold; (3) a moratorium through January 31, 2018 on changes to Columbia's reduced transportation base rates pursuant to the Stipulation; (4) a commitment from Columbia that it will file a general Natural Gas Act (NGA) Section 4(e) rate application to be effective no later than February 1, 2019; and (5) additional shipper-requested terms, all as described more fully in the Settlement filing.

Columbia states that it has served copies of this filing on all affected customers and interested state commissions. Columbia respectfully requests that the Commission issue an order approving the settlement no later than December 1, 2012.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (2012)) by the date set forth below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices or motions must be filed on or before the dates as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date set below need not serve motions to intervene or protests on persons other than the Applicant. Pursuant to Rule 602(f)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.602(f)(2) (2012), initial comments

on the Settlement are due not later than 20 days after the filing of the Settlement, and reply comments are due not later than 30 days after the filing of the Settlement.

The Commission encourages electronic submission interventions and comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Interventions and Comments are due by: September 24, 2012.

Reply Comments are due by: October 4, 2012.

Dated: September 11, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–23031 Filed 9–18–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0104; FRL–9730–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA ICR No. 2104.04 OMB Control No. 2050–0192

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2012–0104 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.superfund@epa.gov.*
- *Mail:* EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Ave. 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–SFUND–2012–0104. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–2745; fax number (202) 566–1476; email address: *Lentz.Rachel@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2012–0104, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–9744.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are general purpose units of local government; land clearance authorities or other quasi-governmental entities that operate under the supervision and control of, or as an agent of, a general purpose unit of local government; government entities created by State legislature; regional councils or groups of general purpose units of local government; redevelopment agencies that are chartered or otherwise sanctioned by the State; States; Indian Tribes other than in Alaska; Alaska Native Regional Corporations, Alaska Native Village Corporations, and Metlakatla Indian Communities; and non-profit organizations.

Title: Brownfields Program—Accomplishment Reporting (Renewal).

ICR numbers: EPA ICR No. 2104.04, OMB Control No. 2050–0192.

ICR Status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) (''the Brownfields Amendments'') was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award cooperative agreements to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For funding purposes, EPA uses the term ''brownfields property(ies)'' synonymously with the term ''brownfields sites.'' The Brownfields Amendments authorize EPA to award several types of cooperative agreements to eligible entities on a competitive basis.

Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, States, tribes, local governments, and other eligible entities can receive assessment cooperative agreements to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup cooperative agreements to carry out cleanup activities at brownfields properties; cooperative agreements to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training cooperative agreements to support the creation and implementation of environmental job training and placement programs. Under subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, State and tribes can receive cooperative agreements to establish and enhance their response programs. The cooperative agreements support activities necessary to establish or enhance four elements of state and tribal response programs and to meet the public record requirements under the statute. The four elements eligible for funding include: (a) Timely survey and inventory of brownfield sites in the State or in the tribal land; (b) oversight and enforcement authorities or other mechanisms and resources; (c) mechanisms and resources to provide meaningful opportunities for public participation; and (d) mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes that receive funding under subtitle C must establish a public record system during the funding period unless an adequate public record system is already established.

Cooperative agreement recipients (recipients) have general reporting and recordkeeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and recordkeeping burden is authorized under 40 CFR Parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA uses several forms to assist recipients in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

This ICR addresses the burden imposed on recipients that are associated with those reporting and recordkeeping requirements that are specific to cooperative agreements awarded under the Small Business Liability Relief and Brownfields Revitalization Act. This ICR revision modifies the annual reporting and recordkeeping burden under the previous ICR. The modified burden reflects an increase in the number of respondents subject to the reporting and recordkeeping requirements, lower number of responses based on previous three years of data submissions, and improvements to the reporting forms based on EPA's experience. By using the same form to report information on recipient activities, EPA is adopting a streamlined approach that avoids potential confusion among recipients and allows the Agency to collect and report program information consistently across all brownfields cooperative agreements. EPA is also modifying the reporting form to simplify and clarify the reporting requirements, which will improve the accuracy of information reported and minimize the burden to recipients.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.25 hours per response for the Property Profile Form

and 4 hours per response for the Job Training Reporting Form. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1007.

Frequency of response: Bi-annual for subtitle C recipients; quarterly for subtitle A recipients.

Estimated total average number of responses for each respondent: 20.

Estimated total annual burden hours: 3,167 hours.

Estimated total annual costs: $308,911. This includes an estimated burden cost of $308,911 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is a decrease of one hour in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's updating of burden estimates for this collection based on an increase in number of experienced recipients familiar with reporting requirements, a lowered number of responses based on previous data submission, and improvements in the ACRES reporting database.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 12, 2012.

Gail A. Cooper,

Acting Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2012–23088 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA–HQ–OECA–2009–0562]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding New Cingular Wireless PCS, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Consent Agreement with New Cingular Wireless PCS, LLC to resolve violations of the Clean Water Act (CWA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Clean Air Act (CAA) and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA, EPCRA, and CAA portions of this Consent Agreement, pursuant to CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

DATES: Comments are due on or before October 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2009–0562, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.oeca@epa.gov,* Attention Docket ID No. EPA–HQ–OECA–2009–0562.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OECA–2009–0562.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2009–0562.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. 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–OECA–2009–0562. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly

available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

FOR FURTHER INFORMATION CONTACT: Michael Calhoun, Special Litigation and Projects Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone (202) 564–6031; fax: (202) 564–9001; email: *calhoun.michael@epa.gov.*

II. Background

This settlement agreement is the result of an investigation by the Special Litigation and Projects Division (SLPD) in the Office of Civil Enforcement of AT&T Wireless (AWS) for potential EPCRA Section 311 and 312 reporting violations, CWA violations related to Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements and CAA violations related to the permitting of backup generators under State Implementation Plan (SIP) rules. On October 26, 2004, AWS was purchased by Cingular Wireless PCS, LLC (CW). CW was subsequently renamed New Cingular Wireless PCS, LLC (NCW). The scope of this settlement agreement is limited to legacy AWS-owned facilities that were subject to SLPD's investigation from 2001 to 2003.

Pursuant to the settlement agreement, NCW will pay a civil penalty of $750,000, will expend an additional $625,000 for Supplemental Environmental Projects and will conduct CAA and SPCC compliance audits at legacy AWS sites. EPA and NCW negotiated an administrative Consent Agreement in accordance with the Consolidated Rules of Practice, 40 CFR 22.13(b) (*In Re: New Cingular Wireless PCS, LLC,* Docket Nos. CWA–HQ–2009–8001, CAA–HQ–2009–8001, EPCRA–HQ–2009–8001). This Consent Agreement is subject to public notice and comment under CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

CWA

NCW violated CWA section 311(j) and 40 CFR Part 112, because it inadequately prepared and/or failed to prepare and implement SPCC plans for the 14 facilities listed below between 2001 and 2008. As authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), EPA has assessed a civil penalty for these violations.

Site	Address	City	State
1. Little Rock	900 S. Shackleford Rd.	Little Rock	AR
2. Signal Peak	I–80 & Rattlesnake Rd.	Soda Springs	CA
3. Paauilo	Kukaiau Ranch	Paauilo	HI
4. Urbandale	4157 109th St.	Urbandale	IA
5. Evansville	4510 O'Hara Dr.	Evansville	IN
6. St. Rose	160 James Dr.	St. Rose	LA
7. Southborough	155 Northborough Dr.	Southborough	MA
8. Albany	2 Kross Key Dr.	Albany	NY
9. New Hyde Park	198 Armstrong Rd.	New Hyde Park	NY
10. Oklahoma City	3201 Quail Springs Parkway	Oklahoma City	OK
11. Wilkes Barre	485 Lasley Ave.	Wilkes Barre	PA
12. Allen	800 Venture Dr.	Allen	TX
13. Austin	4400 Staggerbrush Rd.	Austin	TX
14. Milwaukee	5825 99th St.	Milwaukee	WI

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), based on the time period in which the violations occurred, any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $157,500 by EPA for violations occurring after March 15, 2004, and up to $137,500 for violations up to and including that date. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is October 19, 2012. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

EPCRA

NCW also violated EPCRA section 311, 42 U.S.C. 11021, and the regulations found at 40 CFR 370.21, when it failed to submit a Material Safety Data Sheet (''MSDS'') for a hazardous chemical(s) or, in the alternative, a list of such chemicals, at 51 facilities for varying lengths of time between 2001 and 2003. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

NCW also violated EPCRA section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR Part 370.25, when it failed to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and/or the fire department with jurisdiction over 314 facilities listed in Attachment A for varying lengths of time between 2001 and 2003. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Attachment A to the proposed CAFO lists the 325 EPCRA sites in violation of EPCRA sections 311 and 312.

Under EPCRA section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of EPCRA. Proceedings under EPCRA section 325

are conducted in accordance with 40 CFR part 22.

CAA

NCW also violated regulations promulgated pursuant to the California SIP involving the two facilities described in the paragraphs below at varying lengths of time between 2001 and 2007. Section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(2), requires states to submit implementation plans to implement, maintain, and enforce ambient air quality standards. Section 110(a)(2)(C) of the CAA, 42 U.S.C. 7410(a)(2), requires states to include in their implementation plans regulation of the modification and construction of any stationary source covered by the plan. The California State Implementation Plan (SIP) includes requirements from local governments. The California SIP, including the requirements specific to the local governments, was approved by EPA under section 110 of the Act, 42 U.S.C. 7410.

The California air quality control districts' rules for the jurisdictions set forth below include regulations that require construction and/or operating permits for certain stationary sources of air pollution. As detailed below, each of these provisions was incorporated into the California SIP and is therefore federally enforceable.

In the State of California, NCW operates diesel fuel-powered electric generators that are stationary sources within the meaning of CAA section 302(z), 42 U.S.C. 7602(z).

A. Bay Area Air Quality Management District (BAAQMD)—The California SIP includes a provision, Regulation 2, Rule 1 BAAQMD Rules, stating that any person installing any equipment, the use of which may cause the issuance of air contaminants, must first obtain authorization for such construction and subsequent operation. This provision was federally approved and became federally enforceable on January 26, 1999 (64 Fed. Reg. 3850). NCW owns or operates a facility (2 miles off Lynch Road, Suisun, CA) in the BAAQMD that installed a pollution-emitting diesel-powered electric generating unit without written authorization from BAAQMD in violation of Regulation 2, Rule 1.

B. San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)—The California SIP includes a provision, section 3.0 in SJVUAPCD Rule 2010, stating that any person installing any equipment, the use of which may cause the issuance of air contaminants, must first obtain authorization for such construction and subsequent operation. This provision was federally approved and became federally enforceable on July 23, 1999 (64 Fed. Reg. 39,920). NCW owns or operates a facility (6855 West Eight Mile Road, Stockton, CA) in the SJVUAPCD that installed two pollution-emitting diesel-powered electric generating units without written authorization from SJVUAPCD in violation of Rule 2010.

NCW violated regulations promulgated pursuant to the California SIP involving the two facilities described in the paragraphs above and is therefore subject to federal enforcement under CAA section 110(a). EPA, as authorized by CAA section 113(d), 42 U.S.C. 7413(d), has assessed a civil penalty for these violations. Under CAA section 113(d), 42 U.S.C. 7413(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable requirement of the CAA, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR Part 22.

EPA will not issue an order in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: September 10, 2012.

Bernadette Rappold,

Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 2012–23090 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9730–1]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Mississippi's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective on September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* or Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribal, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 14, 2010, the Mississippi Department of Environmental Quality (MDEQ) submitted an application entitled ''Regulatory Services Portal/ Hazardous Waste Biennial Reporting'' for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed MDEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/ modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Mississippi's request to revise/modify its following EPA-authorized programs to allow electronic

reporting under 40 CFR parts 51, 61, 70, 261–262, and 264–265 is being published in the **Federal Register**:

Part 52—Requirements for Preparation, Adoption, and Submittal of Implementation Plans;

Part 61—National Emissions Standards for Hazardous Air Pollutants Subpart M—National Emission Standard for Asbestos;

Part 70—State Operating Permit Programs; and

Part 272—Approved State Hazardous Waste Management Programs.

Specifically, EPA has approved the state's revision to its part 272 authorized program for electronic reporting of hazardous waste biennial report information under 40 CFR parts 262.41 and 264.75, for electronic submissions that include a handwritten signature on a separate paper submission report instead of an electronic signature.

MDEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: September 10, 2012.

Andrew Battin,

Director, Office of Information Collection.

[FR Doc. 2012–23089 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9729–8]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of Section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, public notice is hereby given that the state of Utah has revised its Public Water System Supervision (PWSS) Program by adopting regulations for the Lead and Copper Short Term Revisions, Long Term 1 Enhanced Surface Water Treatment Rule, the Long Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfectants and Disinfection Byproducts Rule that correspond to the National Primary Drinking Water Regulations (NPDWR). The EPA has completed its review of these revisions in accordance with the SDWA and proposes to approve them.

Today's approval action does not extend to public water systems in Indian country as defined in 18 U.S.C. 1151. Please see Supplementary Information, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by October 19, 2012. Please see Supplementary Information, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective October 19, 2012. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: James B. Martin, Regional Administrator, c/o Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Unit (7th floor), 1595 Wynkoop Street, Denver, CO 80202–1129; (2) Utah Department of Environmental Quality, Division of Drinking Water, (3rd floor), 195 North 1950 West, Salt Lake City, UT 84116.

FOR FURTHER INFORMATION CONTACT: Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6653.

SUPPLEMENTARY INFORMATION: The EPA approved Utah's application for assuming primary enforcement authority for the PWSS program, pursuant to Section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. The Utah Department of Environmental Quality, Division of Drinking Water administers Utah's PWSS program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country (18 U.S.C. 1151) in Utah?

Utah is not authorized to carry out its PWSS program in Indian country, as that term is defined at 18 U.S.C. 1151. Indian country includes, but is not limited to, land within the formal Indian Reservations located within or abutting the state of Utah, including the Skull Valley, Paiute, Navajo, Goshute, Ute Mountain, and Northwestern Shoshoni Indian Reservations; Indian country lands within the Uintah and Ouray Indian Reservation; any land held in trust by the United States for an Indian tribe, and any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and in a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: August 27, 2012.

Howard M. Cantor,

Acting Regional Administrator, Region 8.

[FR Doc. 2012–23093 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9729–7]

Public Water System Supervision Program Revision for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of Section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, public notice is hereby given that the state of Colorado has revised its Public Water System Supervision (PWSS) Program by adopting regulations for the Long Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfectants and Disinfection Byproducts Rule that correspond to the National Primary Drinking Water Regulations (NPDWR). The EPA has completed its review of this revision in accordance with the SDWA and proposes to approve Colorado's primacy revision for the Long Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfectants and Disinfection Byproducts Rule.

Today's approval action does not extend to public water systems in Indian country as defined in 18 U.S.C. 1151. Please see Supplementary Information, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by [insert date 30 days after publication in the **Federal Register**]. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective October 19, 2012. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: James B. Martin, Regional Administrator, c/o Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Unit (7th floor), 1595 Wynkoop Street, Denver, CO 80202–1129; (2) Colorado Department of Public Health and Environment (CDPHE), Drinking Water Section, 4300 Cherry Creek Drive South, Denver, CO 80246–1530.

FOR FURTHER INFORMATION CONTACT: Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6653.

SUPPLEMENTARY INFORMATION: The EPA approved Colorado's application for assuming primary enforcement authority for the PWSS program, pursuant to Section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 C.F.R. Part 142. The Colorado Department of Public Health and Environment administers Colorado's PWSS program.

A. Why are revisions to State programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 C.F.R. Part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR Parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its PWSS program in Indian country, as that term is defined at 18 U.S.C. 1151. Indian country includes, but is not limited to, land within the formal Indian Reservations located within or abutting the state of Colorado, including the Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, any land held in trust by the United States for an Indian Tribe, and any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and in a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: August 13, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–23092 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9729–6]

Environmental Financial Advisory Committee; Request for Nominations of Candidates to the Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill vacancies on the Environmental Financial Advisory Board (the Board or EFAB). The Board seeks to maintain diverse representation across all workforce sectors and geographic locations. Nominees should demonstrate experience in any of the following areas: Environmental technology investments; commercial banking, local utility management and finance, green infrastructure financing, sustainable community partnerships; environmental insurance, and water and wastewater infrastructure and program financing. Nominees are encouraged who live and work in the southeastern, southwestern, western, and northwestern parts of the United States.

EPA values and welcomes diversity. In an effort to obtain a diverse pool of candidates, EPA encourages nominations of women and men of all racial and ethnic groups. In addition to this notice, other sources may be utilized in the solicitation of nominees. The deadline for receiving nominations is Monday, October 15, 2012. Appointments will be made by the Deputy Administrator of the Environmental Protection Agency and will be announced in March 2013. Nominee qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

DATES: Nominations should be submitted in time to arrive no later than October 15, 2012.

Background Information: The Environmental Financial Advisory Board was chartered in 1989 under the Federal Advisory Committee Act to provide advice and recommendations to EPA on the following issues:

- Reducing the cost of financing environmental facilities and discouraging polluting behavior;
- Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;
- Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;
- Identifying approaches specifically targeted to small/disadvantaged community financing;
- Increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal tax laws;
- Analyzing how new technologies can be brought to market expeditiously;
- Increasing the total investment in environmental protection of public, and private environmental resources to help ease the environmental financing challenge facing our nations.

The Board meets two times each calendar year (two days per meeting) at different locations within the continental United States. Board members typically contribute approximately 1–3 hours per month to the Board's work. The Board's membership services are voluntary and the Agency is unable to provide honoraria or compensation, according to FACA guidelines. However, Board members may receive travel and per diem allowances, where appropriate and in accordance with Federal Travel Regulations for invitational travelers.

Evaluation Criteria: The following criteria will be used to evaluate nominees:

- Residence in the continental United States;
- Professional knowledge of, and experience with, environmental financing activities;
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations;
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies; and
- Willingness to serve a two-year term as an active-contributing member, with possible re-appointment to a second term.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as expertise/experience. Contact details should include full name and title, business mailing address, telephone, fax, and email address. A supporting letter of endorsement is encouraged but not required.

Addresses/For Further Information Contact: Submit nomination materials by postal mail, electronic mail, or fax to: Pamela Scott, Membership Coordinator, Environmental Financial Advisory Board, EPA, Office of the Chief Financial Officer, 1200 Pennsylvania Avenue NW. (2731A), Washington, DC 20460; or email *scott.pamela@epa.gov;* phone 202–564–6368; or fax 202–565–2587.

Dated: September 11, 2012.

Timothy P. McProuty,

Acting Director, Center for Environmental Finance, Office of the Chief Financial Officer.

[FR Doc. 2012–23086 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9361–1]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before October 19, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Katie Weyrauch.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Katie Weyrauch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; email address: *weyrauch.katie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. What action is the agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 18 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
002724–00622	Speer Py-Perm Aqueous Insect Killer #5	Piperonyl butoxide; Pyrethrins; Permethrin.
002724–00633	Speer Py-Perm Aqueous Insect Killer #9	Piperonyl butoxide; Pyrethrins; Permethrin.
007405–00073	Chemi-cap Flying & Crawling Insecticide II	Pyrethrins, Piperonyl butoxide, Permethin.
011678–00072	MCW Technical Diflubenzuron	Diflubenzuron.
015300–00011	Chemical Treatment CT–202	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
015300–00022	Chemical Treatment CL–2158	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
015300–00023	Chemical Treatment CL–2159	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
047000–00169	R & M Flea & Tick Shampoo #3	Piperonyl butoxide, Pyrethrins.
052867–00001	Microbiotrol 99W	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
066222–00059	Propiconazole Technical	Propiconazole.
066330–00371	Tribenuron-methyl Technical	Tribenuron-methyl.
070908–00003	NAC 20	Boric acid.
073049–00441	Dinotefuran 0.5% Cockroach Gel Bait Professional	Dinotefuran.
073049–00442	Dinotefuran 0.5% Roach Bait Stations	Dinotefuran.
073049–00443	Dinotefuran 0.2% Roach Bait Station	Dinotefuran.
073049–00446	Shuriken Cockroach Gel	Dinotefuran.
081343–00001	Mykrostat A–100	10,10'-Oxybisphenoxarsine.
CA010023	Goal 2XL Herbicide	Oxyfluorfen.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
2724	Wellmark International, 1501 E. Woodfield Rd., Suite 200 West, Schaumburg, IL 60173.
7405	CPC Aeroscience, Inc., P.O. Box 667770, Pompano Beach, FL 33066–7770.
11678	Makhteshim Chemical Works Ltd, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
15300	Chemtreat, Inc, 5640 Cox Rd., Glen Allen, VA 23060.
47000	Chem-Tech, LTD, 4515 Fleur Dr. #303, Des Moines, IA 50321.
52867	Chemical Equipment Labs, P.O. Box A, Havertown, PA 19083.
66222	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
66330	Arysta Life Science North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
70908	Grow More, Inc, Agent: RegWest Company, LLC , 8203 West 20th St., Suite A, Greeley, CO 80634–4696.
73049	Valent BioSciences Corporation, Environmental Science Division, 870 Technology Way, Libertyville, IL 60048–6316.
81343	MyTech, Inc, 751 Queen Ann St., Burlington, NC 27217.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company name and address
CA010023	Dow AgroSciences LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II, have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 11, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–22966 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9361–2]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before March 18, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Katie Weyrauch.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Katie Weyrauch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; email address: *weyrauch.katie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information

claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 51 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000100–00990	Demon WP Insecticide	Cypermethrin
000264–00778	Stratego	Propiconazole, Trifloxystrobin
000432–00867	Delta GC Insecticide Granule	Deltamethrin
000432–01240	DeltaGard GC Granular Insecticide	Deltamethrin
000432–01241	DeltaGard T & O Granular Insecticide.	Deltamethrin
000432–01242	DeltaGard GC Granular Insecticide	Deltamethrin
000432–01243	DeltaGard T & O Granular Insecticide.	Deltamethrin
000432–01307	Tempo 20 WP T & O Insecticide in Water Soluble Packets (120G).	Cyfluthrin
000432–01325	Tempo 0.02 Ornamental Insecticide.	Cyfluthrin
000432–01337	Tempo 2 Golf Course Insecticide	Cyfluthrin
000432–01359	Tempo 2 Greenhouse and Nursery Insecticide.	Cyfluthrin
000675–00019	Bulk Amphyl Brand Disinfectant	2-Benzyl-4-chlorophenol; o-Phenylphenol
001043–00115	Process Vesphene II ST	4-tert Amylphenol o-Phenylphenol
001448–00092	Busan 1024	3,5,7-Triaza-1-azoniatricyclo(3.3.1.1 (superscript3,7)) decane, 1-methyl-, chloride
002829–00090	Durotex 7603	10,10′-Oxybisphenoxarsine
002829–00096	Vinyzene BP 5–2	10,10′-Oxybisphenoxarsine
002829–00105	Vinyzene BP–5 SIL3	10,10′-Oxybisphenoxarsine
002829–00109	Vinyzene BP–5–2MS	10,10′-Oxybisphenoxarsine
002829–00110	Vinyzene BP 5–2 MEK	10,10′-Oxybisphenoxarsine
002829–00115	Vinyzene SB–1	10,10′-Oxybisphenoxarsine
002829–00120	OBPA	10,10′-Oxybisphenoxarsine
002829–00125	Vinyzene BP–5–5 DIDP	10,10′-Oxybisphenoxarsine
002829–00132	Vinyzene SB–2	10,10′-Oxybisphenoxarsine
002829–00144	Vinyzene IT 4081 DIDP	10,10′-Oxybisphenoxarsine
003377–00020	Bromine Chloride Disinfectant	Bromine chloride
009688–00134	Chemico Insect Bait A	Sulfluramid
009688–00199	Chemico Insect Bait SS	Sulfluramid
009688–00209	Chemico Insect Bait REP	Sulfluramid
010292–00020	Unitab	Phosphoric acid 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride
010772–00005	Sno Bol Toilet Bowl Cleaner	Hydrochloric acid; 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride; Alkyl*dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride; 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride
048520–00016	Poly-50 Algaecide	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride)
062719–00418	RH–0611	Mancozeb Myclobutanil
062719–00584	GF 1948	Propiconazole
066330–00337	Micro Flo Permethrin 3.2 AG	Permethrin
066330–00376	Thifensulfuron-methyl Technical	Thifensulfuron

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
074655–00027	Olin 3204	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethyllimino)-1,2-ethanediyl dichloride
AL020006	Propiconazole EC	Propiconazole
AR020003	Propiconazole EC	Propiconazole
CA090003	Agri-Mek 0.15 EC Miticide/Insecticide.	Abamectin
FL100007	Gramoxone Inteon	Paraquat dichloride
KY050001	Propimax EC	Propiconazole
ME090004	Ethrel Brand Ethephon Plant Regulator.	Ethephon
MI040003	Propiconazole EC	Propiconazole
MI110003	Gramoxone Inteon	Paraquat dichloride
MN030003	Propiconazole EC	Propiconazole
MS030003	Propiconazole EC	Propiconazole
ND020003	Propiconazole EC	Propiconazole
NV000005	WIN–FLO 4F	Pentachloronitrobenzene
NY050002	Propimax EC	Propiconazole
OH030003	Propiconazole EC	Propiconazole
WA000014	Daconil SDG	Chlorothalonil

The following table includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
100; CA090003; FL100007; MI110003.	Syngenta Crop Protection, LLC., 410 Swing Rd., PO Box 18300, Greensboro, NC 27419–8300.
264; ME090004.	Bayer CropScience LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
432	Bayer Environmental Science, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709.
675	Reckitt Benckiser LLC, 399 Interpace Parkway, Parsippany, NJ 07054–0225.
1043	Steris Corporation, P.O. Box 147, St. Louis, MO 63166–0147.
1448	Buckman Laboratories Inc., 1256 North McLean Blvd., Memphis, TN 38108.
2829	Rohm and Haas Company, 100 Independence Mall West, Suite 1A, Philadelphia, PA 19106–2399.
3377	Albemarle Corporation, 451 Florida St., Baton Rouge, LA 70801–1765.
9688	Chemisco, P.O. Box 142642, St. Louis, MO 63114–0642.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company No.	Company name and address
10292	Venus Laboratories, Inc., 111 South Rohlwing Rd., Addison, IL 60101.
10772	Church & Dwight Co., Inc., 469 North Harrison St., Princeton, NJ 08543–5297.
48520	Phoenix Products Company, 5 Roger Ave., Milford, CT 06460–6436.
62719; AL020006; AR020003; KY050001; MI040003; MN030003; MS030003; ND020003; NY050002; OH030003.	Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1054.
66330	Arysta Life Science North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
74655	Hercules Incorporated, A Wholly Owned Subsidiary of Ashland, Inc., 7910 Baymeadows Way, Suite 100, Jacksonville, FL 32256.
NV000005	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
WA000014	GB Biosciences Corporation, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–5458.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of

any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 11, 2012.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–22970 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2012–0501]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087328XX and AP087328XA.

Purpose and Use: Brief description of the purpose of the transaction: To support the export of U.S. manufactured aircraft under operating lease from the United States to the United Arab Emirates.

Brief non-proprietary description of the anticipated use of the items being exported: To provide airline service between the United Arab Emirates and other countries.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: International Lease Finance Corporation.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing 777 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before October 15, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

Kathryn Hoff-Patrinos,

Deputy General Counsel.

[FR Doc. 2012–23060 Filed 9–18–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0502]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087110XX.

Purpose and Use: Brief description of the purpose of the transaction:

To support the export of commercial aircraft to Poland.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger air service between Poland and North America and between Poland and Asia.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Polskie Linie Lotnicze LOT S.A.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing 787 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if

disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before October 15, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

Kathryn Hoff-Patrinos,

Deputy General Counsel.

[FR Doc. 2012–23061 Filed 9–18–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–17]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: FDIC—550 17th Street NW., Room MB–5085, Washington, DC 20429.

Date: September 27, 2012.

Time: 1:30 p.m.

Status: Open.

Matters To Be Considered

Summary Agenda

August 8, 2012 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation FY13 Grant Proposal

ASC FY13 Operating Plan

ASC FY13 Proposed Budget

Appraisal Foundation June 2012 Grant Reimbursement Request

ASC Policy for Monitoring Appraisal Requirements

How To Attend and Observe an ASC meeting

Email your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: September 14, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–23056 Filed 9–18–12; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–18]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: FDIC—550 17th Street NW., Room MB–5085, Washington, DC 20429.

Date: September 27, 2012.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered

July 11, 2012 minutes—Closed Session.

August 8, 2012 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: September 14, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–23059 Filed 9–18–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011075–076.

Title: Central America Discussion Agreement.

Parties: Crowley Latin America Services, LLC.; Dole Ocean Cargo Express; Great White Fleet Liner Service Ltd; King Ocean Services Limited; and Seaboard Marine, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment corrects the address of Great White Fleet Liner Service Ltd.

Agreement No.: 012037–004.

Title: Maersk Line/CMA CGM TA3 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would increase the amount of space being chartered to CMA CGM by Maersk Line under the agreement.

Agreement No.: 012067–008.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering & Logistics GmbH & Co. KG; Beluga Chartering GmbH; Chipolbrok; Clipper Project Ltd.; Hyndai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; and Rickmers-Linie GmbH & Cie. KG.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment would add Hanssy Shipping Pte. Ltd. as a party to the U.S. Agreement and to the

worldwide Agreement of the Heavy Lift Club.

Agreement No.: 012103–002.

Title: CMA CGM/CSAV Victory Bridge Vessel Sharing Agreement.

Parties: CMA CGM, S.A. and Compania Sud American de Vapores S.A.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment increases CMA CGM's slot allocation via implementing a structural purchase.

Agreement No.: 012118–002.

Title: CMA CGM/OOCL Victory Bridge Space Charter Agreement.

Parties: CMA CGM S.A. and Orient Overseas Container Line Limited.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment decreases the amount of space purchased by OOCL from CMA CGM.

Agreement No.: 012182.

Title: Hyundai Glovis/Eukor Car Carriers Inc. Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd. and Eukor Car Carriers Inc.

Filing Party: Sungu Kim; Lee, Hong, Degerman, Kang & Waimey; 1920 Main Street, Suite 900; Irvine, California 92614.

Synopsis: The agreement authorizes Hyundai Glovis and Eukor to charter space to each other in the trade between South Korea and the U.S. East and West Coasts.

Agreement No.: 012183

Title: CSAV/SC Line Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and SC Line S.A.

Filing Party: Walter H. Lion, McLaughlin & Stern, LLP; 260 Madison Avenue, New York, NY 10016.

Synopsis: The agreement authorizes CSAV and SC Line to charter space to each other on an ad hoc basis in the trade between Jacksonville and Port Everglades, FL, on the one hand, and Colombia, Ecuador, Peru, and Chile, on the other hand.

Agreement No.: 201112–004.

Title: Lease and Operating Agreement between Philadelphia Regional Port Authority and Kinder Morgan Liquids Terminals LLC.

Parties: Philadelphia Regional Port Authority and Kinder Morgan Liquids Terminals, LLC.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Ave. NW., 10th Floor; Washington, DC 20036.

Synopsis: The amendment allows for a rent supplement to pay for the fender improvements to Berth #1.

By Order of the Federal Maritime Commission.

Dated: September 14, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–23145 Filed 9–18–12; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 2, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Garst Family (Elizabeth Garst, Edward Garst and Rachel Garst of Coon Rapids, Iowa; Jennifer Garst, Ames, Iowa; Kate Garst Revocable Trust, Des Moines, Iowa, Kate Garst Trustee; Sarah Garst, West Des Moines, Iowa), as a group acting in concert and individually by Elizabeth Garst, Sarah Garst, and Sally Garst Haerr, Fairfield, Iowa,* to increase control to more than 25 percent of Perry Investment Company, Perry, Iowa, and thereby indirectly control Raccoon Valley Bank, Perry, Iowa.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

2. *Clayton B. Patrick, Frankfort, Kentucky;* to acquire share of American Founders Bancorp, Inc., Lexington, Kentucky, and thereby acquire shares of American Founders Bancorp, Inc., Lexington, KY.

Board of Governors of the Federal Reserve System, September 14, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–23096 Filed 9–18–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 11 a.m. (Eastern Time) September 24, 2012.

PLACE: 10th Floor Board Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and a part will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the August 27, 2012 Board Member Meeting
2. Thrift Savings Plan activity report by the Executive Director
   (a) Monthly Participant Activity Report
   (b) Monthly Investment Performance Report
   (c) Legislative Report
3. Annual Budget Report
   (a) Fiscal Year 2012 Results
   (b) Fiscal Year 2013 Budget
   (c) Fiscal Year 2014 Estimate

Part Closed to the Public

1. Procurement

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: September 14, 2012.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–23183 Filed 9–17–12; 11:15 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0274; Docket 2012–0001; Sequence 16]

Public Buildings Service; Information Collection; Art-in-Architecture Program National Artist Registry (GSA Form 7437)

AGENCY: Public Buildings Service (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the

Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Art-in Architecture Program National Artist Registry (GSA Form 7437).

The Art-in-Architecture Program is the result of a policy decision made in January 1963 by GSA Administrator Bernard L. Boudin who had served on the Ad Hoc Committee on Federal Office Space in 1961–1962.

The program has been modified over the years, most recently in 2009 when a requirement was instituted that all artists who want to be considered for any potential GSA commission must be included on the National Artists Registry, which serves as the qualified list of eligible artists. The program continues to commission works of art from living American artists. One-half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

Public comments are particularly invited on: whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: November 19, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gibson, Office of the Chief Architect, Art-in-Architecture & Fine Arts Division (PCAC), 1800 F Street NW., Room 3305, Washington, DC 20405, at telephone(202) 501–0930 or via email to *Jennifer.gibson@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry (GSA Form 7437), by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry (GSA Form 7437)''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry (GSA Form 7437)'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0274, Art-in-Architecture Program National Artist Registry (GSA Form 7437).

Instructions: Please submit comments only and cite Information Collection 3090–0274, Art-in-Architecture Program National Artist Registry (GSA Form 7437), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art-in-Architecture Program actively seeks to commission works from the full spectrum of American artists and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art-in-Architecture Program National Artist Registry, will be used to collect information from artists across the country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 300.

Responses per Respondent: 1.

Total Responses: .25.

Hours per Response: .25.

Total Burden Hours: 75.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0274, Art-in-Architecture Program National Artist Registry (GSA Form 7437), in all correspondence.

Dated:September 6, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–23084 Filed 9–18–12; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–12–0607]

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 the CDC Reports Clearance Officer at (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

The National Violent Death Reporting System (NVDRS)—[OMB#0920–0607, Expiration 11/30/2012]—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Violence is an important public health problem. In the United States, homicide and suicide are the second and third leading causes of death, respectively, in the 1–34 year old age group. Unfortunately, public health agencies do not know much more about the problem other than the statistics and the sex, race, and age of the victims; all information obtainable from the standard death certificate. Death certificates, however, carry no information about key facts necessary for prevention such as the relationship between the victim and suspect and the circumstances of the deaths, thereby making it only possible to discern the gross contours of the problem. Furthermore, death certificates are typically available 20 months after the completion of a single calendar year. Official publications of national violent death rates, e.g. those in Morbidity and Mortality Weekly Report, rarely use data that is less than two years old. Public health interventions aimed at a moving target last seen two years ago may well miss the mark.

Local and Federal criminal justice agencies such as the Federal Bureau of Investigation (FBI) provide slightly more information about homicides, but they do not routinely collect standardized data about suicides, which are in fact

much more common than homicides. The FBI´s Supplemental Homicide Report system (SHRs) collects basic information about the victim-suspect relationship and circumstances, however it does not link violent deaths that are part of one incident such as homicide-suicides. It also is a voluntary system in which some 10–20 percent of police departments nationwide do not participate. The FBI´s National Incident Based Reporting System (NIBRS) addresses some of these deficiencies, but it covers less of the country than SHRs, includes only homicides, and collects only police information. Also, the Bureau of Justice Statistics Reports do not use data that is less than two years old.

CDC therefore proposes to continue a state-based surveillance system for violent deaths that will provide more detailed and timely information. It taps into the case records held by medical examiners/coroners, police, and crime labs. Data is collected centrally by each state in the system, stripped of identifiers, and then sent to the CDC. Information is collected from these records about the characteristics of the victims and suspects, the circumstances of the deaths, and the weapons involved. States use standardized data elements and software designed by CDC. Ultimately, this information will guide states in designing programs that reduce multiple forms of violence.

Neither victim families nor suspects are contacted to collect this information. All data comes from existing records and is collected by state health department staff or their subcontractors. Health departments incur an average of 2.0 hours per death to complete data collection. This is the time required to identify the deaths from death certificates, contact police and medical examiners to get copies of or to view the relevant records and enter the information into the database. Public agencies working with NVDRS states incur an average of 0.5 hours per death to retrieve and then refile records.

This revision provides updates to the coding manual which reflects improved guidance to system users for coding information to be entered into the system. The improved coding guidance in the manual ensures that data is consistently entered across users.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 67,500.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Health Departments	Completion of case abstraction	27	1,000	2.0
Public Agencies	Retrieving and refile records	27	1,000	30/60

Dated: September 13, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–23047 Filed 9–18–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2012–0011]

Interagency Task Force on Antimicrobial Resistance (ITFAR): An Update of A Public Health Action Plan to Combat Antimicrobial Resistance

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH), all located within the Department of Health and Human Services, announce a public meeting and opening of a docket concerning antimicrobial resistance. The purpose of the meeting is twofold. First, the meeting will provide an opportunity for public comment on progress made by Federal agencies in accomplishing activities outlined in ''A Public Health Action Plan to Combat Antimicrobial Resistance (Action Plan)''. Secondly, the meeting will solicit input from the public regarding the Interagency Task Force on Antimicrobial Resistance (ITFAR) activities including the Annual Progress Report and the Action Plan. The meeting will take place at the Hubert H. Humphrey Building in Washington, DC, on Thursday, November 15, 2012, from 1:00 p.m. to 3:30 p.m. After welcome and introductory remarks, the meeting will be open for comments from the public. The agenda is subject to change without notice. Persons wishing to participate, including those who wish to make an oral presentation, must register in advance and provide a copy of their presentations by 12:00 p.m. EDT, Thursday, October 25, 2012.

DATES: The public meeting will be held on Thursday, November 15, 2012 in Washington, DC. The meeting will begin at 1 p.m. and end no later than 3:30 p.m. Written public comment will be accepted through 5 p.m. EST, November 5, 2012.

Deadline for Registration for all Attendees: All attendees must register by 12:00 p.m. EDT, Thursday, October 25, 2012.

Deadline for Requests for Special Accommodation: Special accommodation requests must be submitted by 12 p.m. EDT, Thursday, October 25, 2012.

ADDRESSES: The public meeting will be held at the Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201. *http://www.hhs.gov/about/hhhmap.html.* Telephone: 1–877–696–6775.

Participants should be aware that the meeting location is a Federal government building; therefore, Federal security measures are applicable. Please see Building and Security Guidelines for additional information on security requirements.

You may submit comments, identified by Docket No. CDC–2012–0011 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Marsha Jones, Office of Antimicrobial Resistance, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333.

Instructions: All submissions received must include the agency name and docket number. All relevant comments received will be posted without change to *http://regulations.gov,* including any

personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marsha A. Jones, Office of Antimicrobial Resistance, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop C–12, Atlanta, GA 30333; telephone 404–639–4111; Email *MJones@cdc.gov.*

Registration and Special Accommodations: Persons wishing to participate or who need special accommodations or both must register at *ARplancomments@cdc.gov* or by contacting Marsha Jones at *MJones@cdc.gov.* See Registration to Attend or Participate in the Public Meeting for instructions on how to submit electronic notices of participation.

SUPPLEMENTARY INFORMATION:

1. Background

The Interagency Task Force on Antimicrobial Resistance (ITFAR) was created in 1999 in recognition of the increasing importance of antimicrobial resistance (AR) as a public health threat. The ITFAR coordinates the activities of federal agencies in addressing antimicrobial resistance (AR) and is co-chaired by HHS/CDC, HHS/FDA, and HHS/NIH. Other HHS Task Force members include the Agency for Healthcare Research and Quality (AHRQ), the Centers for Medicare and Medicaid Services (CMS), the Health Resources and Services Administration (HRSA), and the HHS Office of the Assistant Secretary of Health (HHS/OASH). Non-HHS Task Force members include the Department of Agriculture (USDA), the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Environmental Protection Agency (EPA).

In 2001, the ITFAR developed an initial Action Plan to combat AR. This Plan, titled ''A Public Health Action Plan to Combat Antimicrobial Resistance'', outlined specific goals, actions, and implementation steps important for addressing the problem of antimicrobial resistance. Action items were organized into four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The Action Plan and Annual Report are available at *www.regulations.gov* docket number CDC–2012–0011. In 2012, a revised version of the Action Plan addressing the evolving threat of antimicrobial resistance was published. These background documents are also included in the docket.

2. Public Comment and Meeting

The public meeting process provides an opportunity for the public to comment on the activities of the ITFAR to date. In addition, the ITFAR invites written comments or oral presentations by interested persons on the Annual Report as well as the four focus areas of the Action Plan: Surveillance, Prevention and Control, Research, and Product Development. Written comments should be submitted following the instructions provided in **ADDRESSES**.

Comments and suggestions from the public on the Annual Report or any of the focus areas of the Action Plan will be reviewed and carefully considered by the ITFAR. The public should be aware that this meeting agenda does not include development of consensus positions, guidelines, interrogatories, or discussions or endorsement of specific commercial products.

3. Registration To Attend or Participate in the Public Meeting

Participants are asked to preregister to ensure sufficient space. Seating capacity is limited to 200 persons. Those wishing to make an oral presentation during the open public comment period of the hearing should state your intention to present on your registration submission. To register, please send an electronic mail message to *ARplancomments@cdc.gov* by 12 p.m. EDT, Thursday, October 25, 2012. Your email should include your name, email address, and a written statement identifying each focus area you wish to address and the approximate time requested to make your presentation. Organizations should provide this information as well as the names and email addresses of all participants. Because of time restrictions, the number of presenters will be limited to the first 12 to 15 registrants submitting requests to make presentations. The final number of presenters will be determined by the approximate time requested by each presenter. If the number and time requested for presentations exceed the time allotted for public comment, the length of presentations may be limited; registered presenters will be notified of the approximate time scheduled for their presentation prior to the meeting. All other comments may be submitted in writing following the instructions listed in **ADDRESSES**.

4. Building and Security Guidelines

The Hubert H. Humphrey Building is the headquarters of the U.S. Department of Health and Human Services and is located at the foot of Capitol Hill at 200 Independence Avenue SW., Washington, DC 20201. The Humphrey Building is served by Metrorail and Metrobus. The closest Metrorail station is the Federal Center SW station, which is served by the Blue and Orange lines.

The meeting is being held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival, please take account of the need to clear security. All visitors must enter through the HHS Hubert H. Humphrey Building main entrance and present government-issued photo identification (e.g., a valid Federal identification badge, state driver's license, state non-driver's license, or passport).

All persons entering the building must pass through a metal detector. Visitors are issued a visitor's ID wristband in the main lobby and are escorted in groups of five to the meeting room. All items brought to HHS are subject to inspection.

Dated: September 13, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–23041 Filed 9–18–12; 8:45 am]

BILLING CODE 4163–18–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; PAR11–145: International Research in Infectious Diseases including AIDS (IRIDA).

Date: October 10, 2012.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903 *saadisoh@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Biomarkers Study Section.

Date: October 15–16, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics AREA Grant Applications.

Date: October 15, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Denise R Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Topics in Bacterial Pathogenesis.

Date: October 18–19, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: 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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: October 18–19, 2012.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Mechanisms of Cilium-Based Signaling.

Date: October 18–19, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: T Cell Activation & Regulation of Programmed Necrosis by Caspase-8.

Date: October 18, 2012.

Time: 1 p.m. to 2:30 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: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: October 19, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Inner Harbor, 301 W. Lombard St., Baltimore, MD 21201.

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

Date: October 19, 2012.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 11–045: Outcome Measures For Use In Treatment Trials For Individuals with Intellectual and Developmental Disabilities (R01).

Date: October 19, 2012.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Chicago Downtown/River North, 30 East Hubbard, Chicago, IL 60611.

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@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: September 13, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–23131 Filed 9–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: October 15–16, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: The purpose of the meeting will be for the Committee to provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Information is also available on the Meeting registration Web site: *http://palladianpartners.cvent.com/ACRWHFall2012* where any additional information for the meeting will be posted when available.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/orwh/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 13, 2012.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–23132 Filed 9–18–12; 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: Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: October 16, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bukhtiar H Shah, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: System Science and Health in the Behavioral and Social Sciences.

Date: October 16–17, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Diseases and Pathophysiology of the Visual System Study Section.

Date: October 18–19, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

Contact Person: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

Date: October 18–19, 2012.

Time: 8 a.m. to 5 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: Leonid V Tsap, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Expression and Regulation Area Review.

Date: October 18, 2012.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Genes, Genomes, and Genetics.

Date: October 19, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Services Organization and Delivery Overflow.

Date: October 19, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: CMIP and MEDI.

Date: October 19, 2012.

Time: 1 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 (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@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: September 14, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–23130 Filed 9–18–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel; Scientific Conference Award Meeting (R13) 2013/01.

Date: October 26, 2012.

Time: 11 a.m. to 4 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: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Room 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov.*

Dated: September 14, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–23126 Filed 9–19–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Action Subject to Intergovernmental Review

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement, are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders. We will award these grants after October 1, 2012, because our award authority commences at the beginning of the fiscal year.

DATES: A state single point of contact and other interested state or local entities may submit written comments regarding AML and regulatory funding by December 31, 2012.

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

- *Electronic mail:* Send your comments to *jbautista@osmre.gov.*
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Bautista, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., MS 124–SIB, Washington, DC 20240; Telephone (202) 208–7411.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders. We will award these grants after October 1, 2012. Eligible applicants are those states and tribes with a regulatory program or reclamation plan approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., and the State of Tennessee. Under Executive Order (E.O.) 12372, we must provide state and tribal officials the opportunity to review and comment on proposed federal financial assistance activities. Of the eligible applicants, twenty states and tribes do not have single points-of-contact under the E.O. 12372 review process; therefore, we are required to publish this notice as an alternate means of notification.

Description of the AML Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees used to finance reclamation of AML coal mine sites. Grants to eligible states and tribes are funded from permanent (mandatory) appropriations. Recipients use these funds to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977, eligible non-coal sites, and for non-reclamation projects.

Description of the Regulatory Program

Title VII of SMCRA authorizes us to provide grants to states and Indian tribes to develop, administer, and enforce State regulatory programs addressing surface coal mining operations. Title V and Title VII authorize states and tribes to develop regulatory programs pursuant to SMCRA, and upon approval of regulatory programs, to assume regulatory primacy and act as the regulatory authority, and to administer and enforce their respective approved SMCRA regulatory programs. Our regulations at 30 CFR Chapter VII implement the provisions of SMCRA.

Dated: August 27, 2012.

Joseph Pizarchik,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2012–22845 Filed 9–18–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–791/826]

Certain Electronic Fireplaces, Components Thereof, Manuals for Same, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Determination To Review in Part ALJ Initial Determination; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination (''ID'') (Order No. 20) of the presiding administrative law judge (''LJ'') finding the remaining respondents, Shenzhen Reliap Industrial Co. (''Reliap'') and Yue Qiu Sheng (''Yue''), both of Shenzhen, China, in default and in violation of section 337. The Commission has also determined to review the ALJ's Order No. 19 denying respondents' motion for summary determination that complainants' breach of contract allegation is outside the scope of the investigation. The Commission is also requesting briefing on the issue on review and on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General

information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–791 (''the 791 investigation'') on July 20, 2011, based on a complaint filed by Twin-Star International, Inc. of Delray Beach, Florida and TS Investment Holding Corp. of Miami, Florida (collectively, ''Twin-Star''). 76 FR 43345–46 (July 20, 2011). The Commission instituted Investigation No. 337–TA–826 on January 19, 2012 based on another complaint filed by Twin-Star, and consolidated it with the 791 investigation. 77 FR 2757–58 (Jan. 19, 2012). The complaints allege a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electric fireplaces, components thereof, manuals for same, certain processes for manufacturing or relating to same and certain products containing same by reason of infringement of U.S. Copyright Nos. TX0007350474; TX0007350476; VA0001772660; and VA0001772661; and by reason of misappropriation of trade secrets, breach of contract, and tortious inference with contract, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The Commission's notice of investigation named Reliap, Yue, and Whalen Furniture Manufacturing, Inc. (''Whalen'') of San Diego, California as respondents. On July 3, 2012, the Commission issued notice of its determination not to review the ALJ's ID terminating the investigation as to Whalen based on a consent order and settlement agreement.

On June 20, 2012, Twin-Star moved for an ID finding the remaining respondents, Reliap and Yue, in default and in violation of section 337 pursuant to Commission Rule 210.17, 19 CFR 210.17. The Commission investigative attorney filed a response in support of the motion.

On July 13, 2012, the ALJ granted Twin-Star's motion and issued the final ID in this investigation finding the remaining respondents in default and in violation of section 337 pursuant to 19 CFR 210.17 because they did not participate in the investigation following withdrawal of their counsel on March 12, 2012. The ID also contained the ALJ's recommended determination on remedy. Specifically, the ALJ recommended issuance of a limited exclusion order with respect to the defaulting respondents.

Also on July 13, 2012, the ALJ issued Order No. 19, denying a motion filed by Yue on December 11, 2011, for summary determination that Twin-Star's breach of contract claim is outside the scope of the investigation. On July 20, 2012, the Commission investigative attorney petitioned for review of Order No. 19 and the ALJ's final ID. Twin-Star filed a response in opposition on July 30, 2012.

Having examined the record of this investigation, including the ALJ's ID, Order No. 19, and the parties' briefing, the Commission has determined to review Order No. 19 and to review the final ID in part to the extent that it finds a violation of section 337 based on the breach of contract allegations. The Commission has determined not to review the remainder of the ID.

On review, the parties, interested government agencies, and any other interested persons are requested to submit briefing on the issue under review and to address in particular the following:

(1) What support exists for the notion that unfair acts or unfair methods of competition under section 337(a)(1)(A), 19 U.S.C. 1337(a)(1)(A), are limited to ''public wrongs'' as opposed to ''private wrongs.'' Please discuss statutory language, any relevant legislative history, and legal precedent, particularly *Tianrui Group Co.* v. *U.S. Int'l Trade Comm'n,* 661 F.3d 1322 (Fed. Cir. 2011).

(2) Please explain whether a breach of contract claim can give rise to a violation of 19 U.S.C. 1337(a)(1)(A), and discuss any relevant statutory language, legislative history, and legal precedent.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. See 19 U.S.C. 1337(d). Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant is requested to state the issue under review and the dates that the copyrights at issue expire and the HTSUS numbers under which the accused products are imported. The written submissions must be filed no later than close of business on October 12, 2012. Reply submissions must be filed no later than the close of business on November 9, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 CFR 210.4(f). Submissions should refer to the

investigation number (''Inv. No. 337–TA–791/826'') 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).*

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.17, 42–43, 45–46 and 50 of the Commission's Rules of Practice and Procedure (19 CFR 210.17, 210.42–43, 210.45–46, and 210.50).

By order of the Commission.

Issued: September 13, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–23035 Filed 9–18–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade, 2013 Annual Report

AGENCY: United States International Trade Commission.

ACTION: Schedule for 2013 report and opportunity to submit information.

SUMMARY: The Commission has prepared and published annual reports in this series under investigation No. 332–345 since 1996. The 2013 report, which the Commission plans to publish in July 2013, will provide aggregate data on cross-border trade in services and more specific data and information on cross-border trade in professional services (education, health, and legal services) for the period ending in 2011, and transactions by affiliates based outside the country of their parent firm for the period ending in 2010. The Commission is inviting interested members of the public to furnish information in connection with the 2013 report.

DATES: October 25, 2012: Deadline for filing written submissions. July 11, 2013: Anticipated date for publishing the report.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket information system (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader George Serletis (202–205–3315 or *george.serletis@usitc.gov*) or Services Division Chief Richard Brown (202–205–3438 or *richard.brown@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The 2013 annual services trade report will provide aggregate data on cross-border trade in services and more specific data and information on cross-border trade in professional services (education, health, and legal services). Under Commission investigation No. 332–345, the Commission publishes two annual reports, one on services trade (*Recent Trends in U.S. Services Trade*), and a second on merchandise trade (*Shifts in U.S. Merchandise Trade*). The Commission's 2012 annual report in the series of reports on *Recent Trends in U.S. Services Trade* is now available online at *http://www.usitc.gov*; it is also available in CD and printed form from the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

The initial notice of institution of this investigation was published in the **Federal Register** on September 8, 1993 (58 FR 47287) and provided for what is now the report on merchandise trade. The Commission expanded the scope of the investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** on December 28, 1994 (59 FR 66974). The separate report on services trade has been published annually since 1996, except in 2005. As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in selected services industries during the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis. As indicated above, the 2013 report will focus on cross-border trade in professional services (education, health, and legal services).

Written Submissions: Interested parties are invited to submit written statements and other information concerning the matters to be addressed by the Commission in its report on this investigation. For the upcoming 2013 annual report, the Commission is particularly interested in receiving information relating to cross-border trade in professional services (education, health, and legal services). Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest practical date and should be received not later than 5:15 p.m., October 25, 2012. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements in section 201.6 of the

Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Commission intends to prepare only a public report in this investigation. The report that the Commission makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: September 14, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–23112 Filed 9–18–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. ATF 48N]

Granting of Relief; Federal Firearms Privileges (2011R–13T)

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

ACTION: Notice of granting of restoration of Federal firearms privileges.

SUMMARY: Northrop Grumman Guidance and Electronics Company, Inc. (NGGECI) (formerly Litton Systems, Inc.), a subsidiary of Northrop Grumman Corporation (NGC), has been granted relief from the disabilities imposed by Federal laws by the Director of ATF with respect to the acquisition, transfer, receipt, shipment, or possession of firearms.

FOR FURTHER INFORMATION CONTACT: John D. Aiken, 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) 648–8499.

SUPPLEMENTARY INFORMATION: The Attorney General is responsible for enforcing the provisions of the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. He has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the provisions of the GCA in 27 CFR Part 478.

Section 922(g) of the GCA prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. These prohibitions apply to any person who—

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions;

(7) Having been a citizen of the United States, has renounced U.S. citizenship;

(8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

(9) Has been convicted in any court of a misdemeanor crime of domestic violence.

The term ''person'' is defined in section 921(a)(1) as including ''any individual, corporation, company, association, firm, partnership, society, or joint stock company.''

Section 925(c) of the GCA provides that a person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General to lift the firearms disability imposed under section 922(g) ''if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.'' The Attorney General has delegated the authority to grant relief from firearms disabilities to the Director of ATF.

Section 925(c) further provides that ''[w]henever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the **Federal Register** notice of such action, together with the reasons therefor.'' Regulations implementing the provisions of section 925(c) are set forth in 27 CFR 478.144.

Since 1992, Congress has eliminated funding for ATF to investigate or act upon applications for relief from federal firearms disabilities. However, since 1993 Congress has authorized funding for ATF to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities.

An application to ATF for relief from Federal firearms disabilities under 18 U.S.C. 925(c) was submitted for NGGECI. In the matter under review, NGGECI, a subsidiary of NGC, had been convicted in United States District Court for violations of 18 U.S.C. 2, 287, 1001, and 1341 in 1986 and, in 1994, for violations of 18 U.S.C. 2, 371, 641, and 1343.

Pursuant to 18 U.S.C. 925(c), NGGECI, a wholly-owned subsidiary of Northrop Grumman Systems Corporation (NGSC) (which is a wholly-owned subsidiary of NGC), is granted relief from the disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms as a result of these convictions. It has been established to my satisfaction that the circumstances regarding NGGECI's disabilities and its record and reputation are such that the NGGECI will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

B. Todd Jones,

Acting Director.

[FR Doc. 2012–22858 Filed 9–18–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–28]

Rene Casanova, M.D.; Decision and Order

On September 29, 2011, Administrative Law Judge Timothy D. Wing issued the attached recommended decision.[1] Neither party filed exceptions to the decision.[2]

[1] All citations to the ALJ's decision are to the slip opinion as originally issued.

[2] On October 21, 2011, Respondent moved for a ten-day extension of the deadline for filing his exceptions, stating that he had ''been in trial in a state court proceeding this week and has not had sufficient time to properly draft exceptions to the Recommended Order''; the Government consented to the motion. Consent Mot. to Extend Deadline for Filing Exceptions to Recommended Order, at 1.

Having considered the entire record, I have decided to adopt the ALJ's findings of fact and conclusions of law except as discussed below.[3] While I agree with the ALJ that substantial evidence supports the conclusion that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in issuing controlled substance prescriptions to three undercover officers, ALJ 62–64, I find some of his reasoning unsupported by substantial evidence.

More specifically, with respect to the undercover officer who posed as patient J.S., the ALJ, citing the evidence that she had a negative drug screen, used slang to refer to oxycodone and admitted that ''she had not seen a doctor for the controlled substances she admitted taking,'' concluded that J.S.'s '' 'risk for medication misuse or diversion' was patent.'' ALJ at 56. The ALJ then concluded that because ''Respondent conceded that he did not refer [J.S.] to a specialist,'' and did not ''otherwise display[] 'special attention' to her heightened risk of diversion,'' his conduct was ''inconsistent with'' Fla. Admin. Code Ann. r. 64B8–9.013(e). *Id.* at 56–57. According to this provision, which has since been superceded:

> the physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.

Fla. Admin. Code Ann. r. 64B8–9.013(e).

Of significance, no authority (*i.e.,* such as a decision of either the Florida Board of Medicine or Florida courts), is cited to establish that this provision has been interpreted as imposing a mandatory obligation of consultation or referral. Moreover, at no point did the Government's Expert testify that given the presentation of J.S. as a patient, the accepted standard of medical practice required that Respondent refer her to another physician.

It is true that the Government's expert criticized Respondent ''for failing to inquire whether the patient had a substance abuse history or history of addiction.'' ALJ at 61. While this appears to be a violation of the standard governing the ''evaluation of the patient,'' and the Government's Expert testified as to the importance of determining whether a patient has a substance abuse and addiction history, Tr. 372–73, it is not clear why the failure to do so establishes that his conduct was inconsistent with the then-existing referral standard. *See* ALJ at 61.

There is, however, substantial evidence to support the finding that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to J.S. (as well as the two other undercover officers). With respect to all three patients, the Government's Expert testified that Respondent did not take an appropriate history or perform an appropriate physical examination. Tr. 335. While each of the undercovers provided an MRI, the Government Expert explained that an MRI is ''simply a diagnostic tool'' and that ''finding [a] pathology on an MRI does not entitle any practitioner to prescribe controlled substances,'' *id.* at 336, because a ''pathology of an MRI in no way indicates that there is any painful condition'' and must be correlated with the patient's history and physical examination findings. *Id.* at 365. The Government further testified that Respondent's documentation was ''substandard'' and ''very sketchy,'' *id.* at 337, and that he did not ''support the need for the controlled substances with appropriate documentation establishing a valid medical need and treatment plan.''[4] *Id.* at 339. Finally, the Government's Expert testified that ''[i]n all of the cases, the [Respondent] prescribed controlled substances outside the usual course of professional practice or for other than a legitimate medical purpose.'' *Id.*

Under Agency precedent, these findings establish a *prima facie* case that Respondent ''has committed such as acts as would render his registration * * * inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). I further agree with the ALJ's conclusion that Respondent has failed to accept responsibility for his misconduct in prescribing controlled substances to the undercover officers and that he has also failed ''to demonstrate that he will not engage in future misconduct.'' *Id.* at 72. Accordingly, I will adopt the ALJ's recommendation that Respondent's registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BC8677746, issued to Rene Casanova, M.D., be, and it hereby is, revoked. I further order that

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Noting that the exceptions were due the same day that Respondent filed his motion, the ALJ denied the motion finding that he had not demonstrated good cause for the extension. Ruling on Consent Mot., at 1. As the First Circuit has explained, the claim that one's ''attorney was preoccupied with other matters * * * has been tried before, and regularly has been found wanting.'' *De la Torre v. Continental Ins. Co.,* 15 F.3d 12, 15 (1st Cir. 1994) (citing *Mendez* v. *Banco Popular de Puerto Rico,* 900 F.2d 4, 7 (1st Cir. 1990)). *See also De la Torre,* 15 F.3d at 15 (quoting *Pinero Schroeder* v. *FNMA,* 574 F.2d 1117, 1118 (1st Cir. 1978)) (' 'Most attorneys are busy most of the time and they must organize their work so as to be able to meet the time requirements of matters they are handling or suffer the consequences.' '); *McLaughlin* v. *City of LaGrange,* 662 F.2d 1385, 1387 (11th Cir. 1981) (''[t]he fact that counsel has a busy practice does not establish 'excusable neglect' ''); *see also Kamir Garces-Mejias,* 72 FR 54931, 54932 (2007).

[3] I do not adopt the ALJ's conclusion ''that the reference in 21 U.S.C. 823(f)(5) to 'other conduct which may threaten the public health and safety' would as a matter of statutory interpretation logically encompass the factors listed in § 824(a).'' ALJ at 32–33 & n 62. *See Kwan Bo Jin,* 77 FR 35021, 35021 n.2 (2012).

Nor do I adopt the ALJ's finding that ''Respondent's biennial inventory did not go back a full two years from the date of the audit.'' ALJ at 36 (citing Tr. 200). Whether a biennial inventory has been timely completed is based on either the date that a ''registrant first engages in the manufacture, distribution, or dispensing of controlled substances,'' or on the date of a subsequent biennial inventory. 21 U.S.C. 827(a); *see also* 21 CFR 1304.11(c) (''After the initial inventory is taken, the registrant shall take a new inventory of all stocks of control substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.''). In short, a registrant's compliance with this requirement is not measured from the date of an audit.

The ALJ also made various factual findings related to the manner in which the clinic administered urine tests. *See* ALJ at 42–44 (crediting testimony of Agent that no one monitored his urine test, that one patient had said that he had simply scooped urine and water from the toilet and used that as his sample, and one patient had another person provide his urine sample for him); *see also* ALJ at 50 (''there was no supervision while [a second S/A] provided a urine specimen''). Based on this evidence, the ALJ concluded that ''[t]he emerging image of [the clinic] on February 16, 2010, is that of a clinic in which patients collude with one another and with staff members to fabricate urinalysis results and thereby obtain controlled substances outside the usual course of professional practice or for other than a legitimate medical purpose. Although not for the most part directly attributable to Respondent, this misconduct calls into question the legitimacy of APM as a whole.'' ALJ at 44.

There is, however, no evidence that Respondent was aware of this misconduct. It is further noted that while the Government elicited testimony from an Expert on prescribing controlled substances to treat pain, the Expert did not offer any testimony regarding what the standards of professional practice require with respect to the monitoring/supervision of urine tests. I thus do not place any weight on this evidence.

[4] The Government's Expert also testified that it is incumbent on a physician to outline a treatment plan at the time he writes a prescription. *See* Tr. 345–46, 382, 386.

any pending application of Rene Casanova, M.D., to renew or modify the above registration, be, and it hereby is, denied. This Order is effective October 19, 2012.

Dated: August 31, 2012.

Michele M. Leonhart,

Administrator.

Dedra S. Curteman, Esq., for the Government
Bradford Beilly, Esq., for the Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

I. Introduction

A. The Order to Show Cause

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq., to determine whether the Drug Enforcement Administration (DEA, Agency or Government) should revoke a physician's DEA Certificate of Registration (COR) as a practitioner pursuant to 21 U.S.C. § 824(a)(4) and deny, pursuant to 21 U.S.C. § 823(f), any pending applications for renewal or modification and any applications for a new COR. Without this registration, Rene Casanova, M.D. (Respondent), of the State of Florida, would be unable to lawfully prescribe, dispense or otherwise handle controlled substances in the course of his practice.

The DEA Deputy Assistant Administrator issued an Order to Show Cause (OSC) relating to CORs BC8677746, FC1777260 and FC1881211, dated February 22, 2011, and served on Respondent. The OSC provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA CORs BC8677746, FC1777260 and FC1881211, pursuant to 21 U.S.C. § 824(a)(4), and deny any pending applications for renewal or modification, and any applications for any other DEA registration, pursuant to 21 U.S.C. § 823(f), alleging that Respondent's continued registration would be inconsistent with the public interest as that term is defined in 21 U.S.C. § 823(f).

The OSC alleged that Respondent is registered with DEA as a practitioner in Schedules II–V under DEA COR BC8677746 at 750 South Federal Highway, Deerfield Beach, Florida, 33441, under DEA COR FC1777260 at 1655 E. Oakland Park Boulevard, Oakland Park, Florida 33334 and under DEA COR FC1881211 at 640 East Ocean Avenue, Suites 18 and 19, Boynton Beach, Florida 33435, with expiration dates of August 31, 2012. The OSC further alleged that Respondent distributed controlled substances including oxycodone (a Schedule II controlled substance), hydrocodone (a Schedule III controlled substance) and alprazolam (a Schedule IV controlled substance) ''by issuing 'prescriptions' to undercover law enforcement officers for other than a legitimate medical purpose or outside the usual course of professional practice.'' (ALJ Ex. 1 at 2.)

In particular, the OSC alleged that in February 2010, Respondent distributed 180 oxycodone 30 mg tablets and 60 alprazolam 2 mg tablets to an undercover law enforcement officer (UC1) at the request of UC1 after conducting little or no physical examination and without providing any diagnosis warranting the prescriptions. Additionally, the OSC alleged that in February 2010, Respondent distributed 120 hydrocodone 7.5 mg tablets to a second undercover law enforcement officer (UC2) after conducting little or no physical examination and without providing any diagnosis warranting the prescription. The OSC alleged that Respondent distributed controlled substances to UC2 after UC2 informed Respondent that UC2 had obtained hydrocodone tablets from his girlfriend, without a legitimate prescription.

In addition to the OSC, the Government also noticed and alleged additional information in its initial and supplemental prehearing statements. In addition to noticing in greater detail its allegations related to the visits by UC1 and UC2 (*e.g.,* ALJ Ex. 4 at 6–16; ALJ Ex. 7 at 4–5), the Government further alleged that:

1. Vincent Colangelo, the owner/operator of several pain clinics in the Broward County area, including All Pain Management (APM),[1] where Respondent practiced, was involved in an illicit multi-level distribution enterprise of pharmaceutical controlled substances, to include, but not limited to, oxycodone (ALJ Ex. 4 at 4);

2. Mr. Colangelo controlled the issuing, ordering and dispensing of controlled substances for APM, to include among other things a requirement that physicians prescribe the highest quantity of oxycodone and hydrocodone possible (ALJ Ex. 4 at 4–5);

3. Respondent ordered Schedule III–IV controlled substances at his registered location at 750 South Federal Highway, Deerfield Beach, Florida 33441, but did not maintain a current biennial inventory as of February 23, 2011 (ALJ Ex. 4 at 6);

4. A March 29, 2011 on-site inspection and audit of Respondent's registered location for a period from November 16, 2009, through March 29, 2011, revealed that:

a. Discrepancies existed in Respondent's accounting for four controlled substances, constituting a failure to maintain complete and accurate records of controlled substances as required by 21 C.F.R. §§ 1304.21(a) and 1304.22(c) (*see* ALJ Ex. 7 at 2);

b. Respondent failed to note whether required inventory was taken at the open or close of the business day as required by 21 C.F.R. § 1304.11(a) (*see* ALJ Ex. 7 at 3);

c. Respondent failed to properly document the date received on twenty of thirty-seven receiving invoices, as required by 21 C.F.R. §§ 1304.21(a) and 1304.22(c) (*see* ALJ Ex. 7 at 3);

d. Respondent failed to maintain two receiving invoices or packing slips documenting the receipt of controlled substances from Stat Rx as required by 21 C.F.R. § 1304.21(a) (*see* ALJ Ex. 7 at 3);

5. On March 1, 2011, Respondent surrendered for cause DEA CORs FC1777260 and FC1881211 (ALJ Ex. 4 at 6); and

6. Within minutes of one another, Respondent issued nearly identical prescriptions for controlled substances to two patients[2] from Kentucky, who traveled together to see Respondent (ALJ Ex. 7 at 2).

Following prehearing procedures, a hearing was held in Miami, Florida between June 14, 2011, and June 15, 2011, with the Government and Respondent each represented by counsel. Both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. All of the evidence and post-hearing submissions have been considered, and to the extent the parties' proposed findings have been adopted, they are substantively incorporated into those set forth below.

II. Issue

Whether the record establishes that Respondent's DEA COR as a practitioner BC8677746[3] should be revoked and any pending applications for renewal or modification, and any applications for a new registration, should be denied on the grounds that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. §§ 824(a)(4) and 823(f).

III. Evidence and Incorporated Findings of Fact[4]

I find, by a preponderance of the evidence, the following facts:

A. Stipulated Facts[5]

1. Respondent is registered with the DEA as a practitioner in Schedules II–V under DEA COR BC8677746 at 750 South Federal Highway, Deerfield Beach, Florida 33441.

2. Respondent is licensed by the Florida Department of Health as a medical doctor and has been licensed to practice medicine in Florida since August 12, 1999.

3. Respondent has never been disciplined by the Florida Department of Health.[6]

4. Respondent was registered with DEA as a practitioner in Schedules II–V under DEA COR FC1777260. He surrendered registration FC1777260 on March 1, 2011.

5. Respondent was registered with DEA as a practitioner in Schedules II–V under DEA COR FC1881211. He surrendered registration FC1881211 on March 1, 2011.

[1] The testimony at hearing reflected that APM is located at 3300 Griffin Road, Dania Beach, Florida. (Tr. 209.)

[2] The Government's Supplemental Prehearing Statement referenced three customers and related prescriptions. (ALJ Ex. 7 at 2.)

[3] As noted above, the OSC in this case identified three CORs. (ALJ Ex. 1.) On March 1, 2011, Respondent surrendered CORs FC1777260 and FC1881211. (Gov't Exs. 3 & 4; *see also* Jt. Stips. 4 & 5.) Respondent concedes that he surrendered the CORs but denies having done so for cause. (*E.g.,* ALJ Ex. 5 at 2–3.)

[4] In addition to the evidence discussed in this Section, additional evidence and findings of fact are discussed in later Sections of this Recommended Decision.

[5] *See* ALJ Ex. 9; *see also* Tr. 5–6, 301.

[6] *See* Tr. 448–49. At hearing, Respondent testified that his drug inventory has been audited annually by the Florida Department of Health with no negative results. (*See* Tr. 449.)

6. On February 16, 2010, Respondent saw and treated an individual who identified himself as ''Eugene O'Neal'' at APM Urgent Care, 3300 Griffin Road, Dania Beach, Florida. Respondent wrote the prescriptions listed as Government Exhibit 9 for this individual. The patient file for ''Eugene O'Neal'' as produced by the Government is listed as Government Exhibit 10.

7. On February 16, 2010, Respondent saw and treated an individual who identified himself as ''Alfredo Mondego'' at APM Urgent Care, 3300 Griffin Road, Dania Beach, Florida. Respondent wrote the prescriptions listed as Government Exhibit 13 for this individual. The patient file for ''Alfredo Mondego'' as produced by the Government is listed as Government Exhibit 14.

8. On March 10, 2010, Respondent saw and treated an individual who identified herself as ''Julia Sanchez'' at Coast to Coast Healthcare Management (CCHM), 328 East Hillsboro Boulevard, Deerfield Beach, Florida 33441. Respondent wrote the prescriptions listed as Government Exhibit 17 for this individual. The patient file for ''Julia Sanchez'' as produced by the Government is listed as Government Exhibit 18.

B. Introduction

Respondent is licensed to practice medicine in Florida and Massachusetts. (Jt. Stips. 2, 3; Tr. 412–13.) He possesses a medical degree from Tufts University and currently practices in Deerfield Beach, Florida at MinorEmergi Center—Primary Care, 762 South Federal Highway, Deerfield Beach, Florida, and at MinorEmergi Center—Urgent Care & Walk-In Medicine, 750 South Federal Highway, Deerfield Beach, Florida (collectively ''MEC'').[7] (*See* Tr. 17; Gov't Ex. 5.) He has been at MEC for five to six years. (Tr. 22.)

Respondent testified that he previously practiced in Miami at the emergency room of Westchester Hospital and also at another office in the Miami area. (Tr. 22; *see* Tr. 412.) In addition, he previously worked at a Level Two Trauma Center in Boston, Massachusetts.[8] (Tr. 35, 411–12.) He possesses no board certifications and is not employed as a faculty member of a medical school. (Tr. 454.)

Respondent also worked as a physician at APM one day per week from December 2009 to February 2010 (Tr. 22–24, 28; *see* Gov't Ex. 20) and at CCHM from March to April 2010.[9] (Tr. 22–23.)

The gravamen of the Government's allegations relate to Respondent's recordkeeping at MEC and prescribing practices at APM and CCHM.

C. Evidence

1. Background

(a) Witnesses

The Government's evidence included testimony from eight witnesses, including Respondent and a pain management expert, David M. Glener, M.D. (Dr. Glener). Two witnesses were undercover law enforcement officers who posed as patients and received treatment from Respondent at APM: DEA Special Agent (SA) Gene George Grafenstein, Jr. (SA Grafenstein) and SA Alfred Cortes[10] (SA Cortes). In addition, the evidence included testimony from SA Joe Gill (SA Gill) ''case agent'' for the investigation of APM, as well as Group Supervisor (GS) Susan Langston (GS Langston), Diversion Investigator (DI) William Stockmann (DI Stockmann) and DI James Graumlich (DI Graumlich), all of whom played a role in investigations relating to Respondent.

The Government's evidence also included various audio and video recordings of undercover meetings that occurred at APM and CCHM, along with transcripts of portions of the recordings. (Gov't Exs. 8–18.)

Respondent's evidence included testimony from one witness, Respondent. Respondent testified regarding his education and professional background, as well as his prescribing practices. Respondent's evidence also included a handwritten Biennial Medication Inventory dated November 16, 2009.[11] (*See* Resp't Ex. 1.)

With the exception of Respondent, I find all of the witnesses at hearing to be fully credible in that the testimony was generally internally consistent and evidenced a reasonable level of memory for past events. Each witness presented testimony in a professional manner and the material portions of the testimony were consistent with other credible evidence of record. Respondent's testimony was generally presented in a professional and serious manner, but, in certain instances discussed below, I find Respondent not credible to the extent his statements are contradicted by the weight of the objective evidence of record.

(b) Identified Controlled Substances

Uncontradicted testimony at hearing indicated that Lortab and Vicodin are brand names for hydrocodone, a Schedule III controlled substance. (Tr. 126, 137, 499.) Guaifenesin Ac is a controlled substance because it contains codeine. (Tr. 179.) Ambien is a brand of zolpidem. (*See* Tr. 199.) In addition, I take official notice that Zolvit is hydrocodone, a narcotic and Schedule III controlled substance; Percocet and Roxicodone are oxycodone, narcotics and Schedule II controlled substances; and Xanax is alprazolam, a benzodiazepine and Schedule IV controlled substance.[12]

2. MEC

(a) Background

Respondent testified that his current practice is located at 750 and 762 Federal Highway, consisting of ''two offices that are centrally based that are adjoined through a door * * * one of them is urgent care and one of them is primary care * * * .'' (Tr. 414–15.) Respondent's DEA registration is for 750 South Federal Highway. (Jt. Stip. 1; Tr. 463.) Respondent explained that the primary care practice ''is more of a practice where patients are scheduled to be seen and so forth where they have regularly scheduled visits. * * * They're patients who you know who you've developed a rapport with, who you have developed a treatment plan over an extensive period of time * * * .'' (Tr. 415.) In the urgent care practice, by contrast, ''usually patients come in for an acute issue that has to be dealt with'' urgently, to include patients suffering from acute pain. (*See* Tr. 415.) Respondent explained that ''there is no dispensing of any narcotics at 762'' South Federal Highway and no controlled substances are kept on hand in that portion of the facility. (Tr. 464.)

Consistent with Respondent's testimony, DI Stockmann testified that 750 and 762 South Federal Highway are storefronts. (Tr. 115.) One is a primary care center and the other is an urgent care center, at different ends of the same building. (Tr. 115.) Although each address had a separate entrance, 762 and 750 are physically connected. (Tr. 141.) When inside one office, it is possible to get to the other office via interior access.[13] (Tr. 142–43.)

(b) Dispensing at MEC

Respondent dispenses medication at MEC in conjunction with a company called InstyMeds.[14] (Tr. 17, 416.) InstyMeds

[7] The evidence at hearing tended to show that these two addresses are physically connected and are part of a unified practice, as discussed below.

[8] Respondent also completed an internship in general surgery at St. Elizabeth's Hospital in Boston, Massachusetts for one year and a residency in ear, nose and throat surgery at Tufts Medical School New England Medical Center. (Tr. 410.)

[9] Respondent testified that he dispensed Schedule III and IV controlled substances at these clinics, to include hydrocodone, Roxicodone, Valium and Xanax, as well as muscle relaxants and anti-inflammatories. (Tr. 23.)

[10] Spellings in the transcript vary between ''Cortes'' and ''Cortez.'' Because the Government's exhibits reflect the spelling ''Cortes'' (*e.g.*, Gov't Ex. 12), that spelling is adopted in this Recommended Decision.

[11] Respondent Exhibit 1 appears to be substantially the same as Government Exhibit 19 at 2.

[12] Under the APA, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. § 556(e); 21 C.F.R. § 1316.59(e) (2011); *see, e.g., R & M Sales Co.,* 75 Fed. Reg. 78,734, 78,736 n.7 (DEA 2010). Respondent can dispute the facts of which I take official notice by filing a properly supported motion for reconsideration within twenty days of service of this Recommended Decision, which shall begin on the date it is mailed. *See, e.g., Joseph Gaudio, M.D.,* 74 Fed. Reg. 10,083, 10,088 (DEA 2009) (granting respondent opportunity to dispute officially noticed facts within fifteen days of service).

[13] DI Stockmann elaborated that on February 23, 2011, he collected a copy of the clinic's prescription dispensing summary report and two MEC business cards, one of which lists Respondent as Medical Director. (*See* Tr. 109, 136; Gov't Ex. 5.) DI Stockmann testified that the business cards reflect addresses of ''Minor Emergency Center, Primary Care, with Dr. Casanova's name on it, with an address of 762 South Federal Highway, Deerfield Beach, Florida. * * * [T]he second card displays Dr. Casanova's name and also Minor Emergency Center, Urgent Care and Walk-In Medical Center, with an address of 750 South Federal Highway, Deerfield Beach, Florida.'' (Tr. 109; *see* Gov't Ex. 5.)

[14] MEC previously worked with a company called Linear Solutions, but ended the relationship approximately two months before the hearing. (Tr. 18.)

supplied MEC with a machine located in the corner of the waiting room that dispenses a variety of medications to patients, to include antibiotics and Schedule III and IV controlled substances. (*See* Tr. 19–20.) DI Graumlich described it as a ''vending machine where people can get their prescriptions filled after they've been written by the doctor.'' [15] (Tr. 165.) Medications are stored in racks and when patients enter an access code ''it provides them the medication.'' (Tr. 18–19; *see* Tr. 165–66.)

The machine, which is loaded by Respondent's staff, provides medication only while the office is open, and only after patients have received ''all the paperwork from the prescribing provider.'' (Tr. 19, 36–37.) The technology has been available for ten to fifteen years in hospitals and other local facilities. (Tr. 19, 21.) The InstyMeds machine is provided for ease or convenience. (Tr. 21.) Respondent believes using InstyMeds is compliant and assists with all ordering, stocking, dispensing, reporting and recording requirements related to controlled substances.[16] (Tr. 36–37; *see* Tr. 450.) MEC makes a small profit from using InstyMeds to dispense controlled substances. (Tr. 21.)

(c) February 23, 2011 Interview with Respondent

DI Stockmann [17] participated in an investigation of Respondent by serving the OSC and a notice of inspection upon Respondent and interviewing him on February 23, 2011, at MEC. (*See* Tr. 105–06.) DI Stockmann testified that at this interview Respondent identified MEC's hours of operation as Monday to Friday, 9:00 a.m. to 7:00 p.m., and weekends from 9:00 a.m. to 3:00 p.m. (*See* Tr. 106.) Respondent also stated that he employed four to five physician attendants and that his weekly hours were Monday, Wednesday and Friday, 9:00 a.m. to 5:00 p.m., and Tuesdays and Thursdays 9:00 a.m. to 1:00 p.m. (Tr. 106–07.) Respondent saw approximately fourteen or fifteen thousand patients each year, or approximately fifty patients per day. (Tr. 107.) Respondent acknowledged ordering Schedule III and IV controlled substances for MEC. (Tr. 107–08.)

DI Stockmann further testified that he inspected MEC on February 22, 2011, finding ''no evidence of a biennial inventory for that registered location of the controlled substances on hand.'' (Tr. 108.) He testified that Respondent acknowledged this was a violation of federal regulations. (Tr. 108.)

Additionally, DI Stockmann recounted Respondent's surrender of two of his DEA CORs on March 1, 2011. (Tr. 111; *see* Gov't Exs. 3, 4.) Because Respondent was not operating at those locations, DI Stockmann asked Respondent if he would surrender those certificates. (Tr. 130.) At Respondent's request, DI Stockmann called Respondent's counsel and explained he was asking Respondent to surrender licenses for facilities that were not being operated. (Tr. 130.) He did not explain which box he intended to check on the surrender form. (*Compare* Tr. 130, *with* Gov't Ex. 3 at 1; Gov't Ex. 4 at 1.) DI Stockmann explained to Respondent that he had found violations of federal and state law at those locations, to include recordkeeping violations. (Tr. 133.) DI Stockmann further testified that the surrender forms were ''presented to him and [they were] explained to him. And I actually read the top section and he was asked to make sure he read it and understood it.'' (Tr. 139.) The Government's evidence reflects that boxes are checked on the surrender forms next to text indicating that the surrender would be made: ''In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part * * *.'' (Gov't Exs. 3, 4.) Respondent signed at the bottom of the page. (Tr. 139.)

DI Stockmann testified that a ''pill mill'' is an operation containing ''a doctor and a pharmacy, located basically in the same building, and the doctor sees the patients and then he dispenses'' hydrocodone or oxycodone. (Tr. 117.) Pill mills are marked by ''[t]ons of patients in the patient room, they've got patients lined up outside, they've got people that are, for lack of a better term, obsessing about getting in to see physicians.'' (Tr. 118.) DI Stockmann testified that MEC is not a pill mill.[18] (*See* Tr. 118, 127–28.)

Respondent fully and completely cooperated in the inspection of MEC on February 23, 2011, to include granting access to records and inventory. (Tr. 114–15, 119–20.) Without Respondent's consent, the Government would have needed to acquire search warrants. (Tr. 113–14.)

In summary, DI Stockmann saw nothing that was outside the scope of normal medical practice. (Tr. 128.) His statement to Respondent that he could not locate a copy of a biennial inventory was his sole critique. (Tr. 128.)

(d) March 29, 2011 Audit of MEC

DI Graumlich [19] testified that he conducted an inspection and audit of MEC on March 29, 2011. (*See* Tr. 148.) Respondent consented and cooperated, giving agents full access to everything they needed, although he was not required to do so. (Tr. 152, 184; Gov't Ex. 19(a).)

DI Graumlich's audit covered a time frame from November 16, 2009, through March 29, 2011. (Tr. 149.) The audit occurred on-site [20] and reflected a physical hand count verified by members of Respondent's staff of dosage units present (Tr. 171, 174, 196–97), to include two different strengths of hydrocodone, Guaifenesin with codeine, Zolvit and zolpidem. (Tr. 150.)

DI Graumlich requested that Respondent provide any inventory records MEC had taken within the past two years, specifically, the biennial inventory and Respondent's distribution and receiving records. (Tr. 158–59, 174.) Respondent's staff provided a binder containing copies of receiving invoices and pedigree information for drugs purchased, ranging from November 2009 to March 29, 2011. (Tr. 174.) DI Graumlich then calculated the total amount of controlled substances for which Respondent was accountable, as compared to the total amount Respondent had records of distributing or transferring. (*See* Tr. 174–77; Gov't Ex. 19(e).)

At hearing, DI Graumlich testified that Joy Egan, Respondent's office manager (Tr. 26, 153, 202), identified Danny McBride as the representative from Linear Solutions. (Tr. 153–54.) MEC's records indicated that Mr. McBride physically counted all the pills located at the clinic on November 16, 2009, but it is unclear whether this count occurred ''at the beginning or end of the business day, so we didn't know whether to give them credit for the prescriptions that were written that day.'' (Tr. 154, 164; Gov't Ex. 19(b).) DI Graumlich testified that the failure to indicate whether the biennial inventory was taken at the opening or closing of the business day constituted a violation of federal regulations. (Tr. 164, 181, 199.) He stated that Respondent's biennial inventory was also noncompliant because it did not go back a full two years from the date of the audit. (Tr. 200.)

Based on the audit, DI Graumlich found that Respondent was accountable for thirty-five bottles of Guaifenesin Ac but could only account for twenty-seven bottles, resulting in a shortage of eight bottles, a 22.86 percent difference. (Tr. 177, 198–99; Gov't Ex. 19(e).)

[15] Respondent described the machine as a large box, approximately six feet tall and three or four feet wide. (Tr. 19.) He called it a ''vehicle to allow the patients [sic] to get medications after the patient has been seen, treated, examined and determined that the patient needs medications for their [sic] diagnosis.'' (Tr. 18.)

[16] According to DI Graumlich, ''[t]he benefit of the InstyMeds machine * * * was that the computer system tracks what is in the machine and what has been dispensed, and therefore they can tell which drugs they are running low on to place orders for.'' (Tr. 170.)

[17] DI Stockmann testified to having been a DEA DI for the past eight years. (Tr. 104–05.) In this role he investigates and inspects registered locations, seeking to prevent the diversion of controlled substances from legal distribution channels into the illicit market. (Tr. 104.) DI Stockmann previously worked for twelve years as a St. Louis City Metropolitan Police Officer, for the last three of which as a DEA Task Force Officer. (Tr. 105.) His total law enforcement experience is twenty years, and he has a bachelor's degree in criminology and criminal justice. (Tr. 105.)

[18] DI Stockmann testified that the non-controlled substance medications listed in MEC's ''Prescriptions Dispensed Summary Report'' were of the sort that would typically be dispensed in a general medical practice. (Tr. 122; *see* Gov't Ex. 6; *see also* Tr. 389–90 (concurrence in this assessment of Government's expert witness, Dr. Glener).) He also testified that the six prescriptions of the controlled substance Guaifenesin AC Syrup 100 mg recorded as having been dispensed over a two-year period (Gov't Ex. 6 at 15) was not an inordinate amount. (Tr. 125.) He also opined that 145 prescriptions for hydrocodone dispensed over a two-year period (Gov't Ex. 6 at 17) was not consistent with pill mill dispensing. (Tr. 125.) Additionally, the clinic did not buy medication in bulk and then repackage it. (Tr. 126.)

[19] DI Graumlich has worked as a DEA DI for twenty-two years and holds a bachelor's degree. (Tr. 147–48.) His duties include ensuring compliance with the regulations under the Controlled Substances Act (CSA). (Tr. 147.) Consistent with these duties, DI Graumlich has conducted over 100 accountability audits. (Tr. 149.) An accountability audit ensures certain records are being kept and that rules are being followed. (Tr. 148–49.)

[20] As DI Graumlich explained, ''[w]e didn't actually remove hard documents. We copied documents on site at the location and left the original documents with the registrant.'' (Tr. 189.)

Moreover, with respect to Hydrocodone Apap 5/500 30-count bottles, the audit revealed an overage [21] of one bottle, thirty dosage units or 0.89 percent. (Tr. 177–78, 197–98.) With respect to Hydrocodone Apap 7.5/500 30-count bottles, the audit revealed a shortage [22] of five bottles, 150 dosage units or four percent. (Tr. 178–79, 198.) As for zolpidem, the audit revealed a shortage of three bottles, 180 dosage units or twenty-five percent. (Tr. 180, 199.)

DI Graumlich explained that DEA registrants are ''required to maintain records of all controlled drugs received, distributed or otherwise dispensed. And if we have records of all the drugs received or distributed, the account should zero out.'' (Tr. 180–81.) He testified that the fact that Respondent's records of controlled substances did not zero out constituted a failure to maintain complete and accurate records, in violation of federal regulations.[23] (Tr. 181, 203–04.)

In addition, DI Graumlich noted that approximately twenty of MEC's receiving invoices did not reflect the date received, constituting a failure to maintain complete and accurate records. (Tr. 181.) MEC ''provided me with copies of pedigree documents, rather than invoices. * * * They said they * * * had been moved to storage and that they would get those for me. They never did get those for me.'' [24] (Tr. 193.) After Respondent's office provided pedigree records, DI Graumlich gave the clinic several opportunities to provide missing records, to include emailing Ms. Egan after the inspection. (Tr. 202.) He again requested invoices, but ''we were never provided with any other documents. According to Ms. Egan, I believe they could not find the other binder.'' (Tr. 194.)

The audit further revealed ''two receiving invoices that they did not have a record of'' based on ''a printout of their receipts from Stat Rx, their distributor * * *.'' (Tr. 182.)

The audit also reflected MEC's change from using Linear Solutions to InstyMeds. (*See* Tr. 156–57; Gov't Ex. 19(e).) The audit of the InstyMeds machine reflected no discrepancies.

There were, moreover, no discrepancies in the audit of Zolvit oral solution, although ''they originally didn't have any records for that but we had them get copies of their records from their vendor.'' (Tr. 197.)

Although I credit DI Graumlich's uncontested testimony as to his audit's factual findings, I grant no weight to his opinions as to the legality of the findings because these opinions speak to the ultimate issues in the case. A later section of this Recommended Decision addresses the legal ramifications of the March 29, 2011 audit.

(e) Respondent's Position on the MEC Audit

Respondent credibly testified that regarding recordkeeping,

[t]he bottom line is that I ultimately am responsible and was held accountable and I wasn't aware of the fact that he had not gotten the rest of the information. Maybe there was a misunderstanding in regards to the pedigree paperwork and so forth. I am fully aware of that and irrespective of the results of these hearings, I plan to provide all the appropriate information that is required and necessary.

(Tr. 449–50; *see also* Resp't Br. at 8.) Upon inquiry from his attorney, Respondent testified that he ''fully understand[s]'' that audit results need to zero out, and that he ''[o]ne hundred percent'' intends to ensure future deliveries are properly documented. (Tr. 450.)

3. All Pain Management (APM)

(a) Background of Investigation of APM and its Owners

SA Gill [25] testified to being the ''case agent'' for an investigation of APM (Tr. 84), and that Respondent was a physician there. (Tr. 43.) In approximately September 2009, SA Gill received information that a Mr. Vincent Colangelo owned several pain clinics in South Florida. (Tr. 43.) He opened an investigation on Mr. Colangelo and discovered that APM was one of the clinics in which Mr. Colangelo owned an interest in approximately October or November of 2009. (Tr. 43–44.) The investigation also revealed that Mr. Colangelo operated a number of clinics without possessing a DEA COR. (Tr. 44.) Joel Ortega and Maite del Rey were two other co-owners of APM but Mr. Colangelo was the primary owner, although he was not there on a daily basis.[26] (Tr. 44, 46–47.)

SA Gill testified that based on his investigation, Mr. Colangelo was responsible for finding, interviewing and hiring ''doctors that would write scripts and see the number of patients that he wanted to be seen, basically.'' (Tr. 46.) SA Gill testified that Mr. Colangelo would collect the clinic's money or it would be delivered to him at the end of the night or several times per week. (Tr. 46–47.)

Based on information from a confidential source, SA Gill testified that Mr. Colangelo only employed doctors ''that would follow his rules and there weren't specific quantities or types that doctors had to write, but if they weren't writing high enough scripts they would be fired.'' (Tr. 47.) Mr. Colangelo initially had a mandatory prescription ''formula'' of 240/90/90, meaning 240 oxycodone 30 mg dosage units, 90 oxycodone 15mg dosage units, and 90 Xanax 2 mg dosage units. (Tr. 48.) The formula was not something doctors started with initially and not every patient received it. (Tr. 67, 69.) SA Gill explained that ''[o]n the first visit, for someone to get 240/90/90, they would die * * *. So the doctor builds up to that.'' [27] (Tr. 69.) Respondent's prescriptions [28] at APM did not appear to comply with the 240/90/90 rule.[29] (Tr. 67.)

SA Gill testified that the investigation of Mr. Colangelo led to an indictment and superseding indictment against Mr. Colangelo. (Tr. 62.) Respondent is not mentioned in either document, and SA Gill is aware of no evidence that Respondent knew Mr. Colangelo, was in contact with him or knew he owned an interest in APM. (*See* Tr. 63, 82.) SA Gill does not know who hired Respondent. (Tr. 64.) Moreover, SA Gill is aware of no evidence that Mr. Colangelo had anything to do with Respondent's treatment of patients, or what patients he saw or turned away. (Tr. 64–65.)

Similarly, Respondent testified that he had no knowledge of Mr. Colangelo's ownership of APM.[30] (Tr. 462.) He testified that APM was owned by a married couple named Maite and Joel, who also ran the facility. (Tr. 24–25, 38, 458. *But see* Tr. 84.) Respondent testified that Maite and Joel hired him after he interviewed with Maite. (Tr. 39.) Maite told him at his employment interview that she was the owner of APM. (Tr. 39.) He did not look up the ownership records of APM on a Florida government Web site.[31] (Tr. 39.)

(b) Respondent's Employment and Practice at APM

Respondent testified that he worked as an independent contractor at APM for six to eight weeks from December 2009 to February 2010. (Tr. 22–23; *see* Tr. 416, 454–55.) He

[21] An overage occurs ''when they account for distributing more drugs than they can account for purchasing.'' (Tr. 178.)

[22] Shortages can occur for various reasons, to include recordkeeping issues, theft or loss. (Tr. 180.)

[23] He conceded, however, that regulated audits of manufacturers and distributors of controlled substances do not always zero out. (Tr. 187.)

[24] DI Graumlich testified that DEA does not require that physicians maintain pedigree records. (Tr. 194.)

[25] SA Gill testified in substance to having eight years of experience working for the DEA. (Tr. 41.) He has worked for two years in a tactical diversion squad, a working group that focuses on pain clinics, doctors and pharmaceuticals. (Tr. 41.) Prior to joining DEA he worked for three-and-one-half years at a police department in New Jersey and as a crime analyst and statistician. (Tr. 42.) He holds a bachelor's and a master's degree in criminal justice. (Tr. 43.)

[26] SA Gill testified that Mr. Ortega and Ms. del Rey were the original owners of APM. (Tr. 83.) The business was not doing well, and Mr. Colangelo offered to become part owner in exchange for providing patients. (Tr. 83–84.) Mr. Ortega and Ms. del Rey oversaw daily operations. (Tr. 84.)

[27] SA Gill elaborated that ''if you were an existing patient at another clinic and went in and told the doctor that you were currently getting 240/90/90, chances are you would get the maximum or close to it. If you were a new patient and didn't have any prior medical records from the pain clinic then the doctors would start you out lower and build you up to that level.'' (Tr. 85–86.)

[28] SA Gill testified that the Government obtained patient files after executing a search warrant on March 1, 2011, at a storage unit owned by Mr. Colangelo. (Tr. 52.) The Government obtained undercover patient files for SA Grafenstein, SA Cortes and SA Saenz in this manner. (Tr. 56–58.)

[29] For instance, SA Grafenstein received a prescription for 180 oxycodone 30 mg tablets and 60 Xanax 2 mg tablets, SA Cortes received a prescription for 120 hydrocodone 7.5 mg tablets and SA Saenz received a prescription for 90 hydrocodone 5 mg tablets, 90 Motrin 800 mg tablets and a pack of Medrol. (Tr. 67–69; Gov't Ex. 9; Gov't Ex. 10 at 3–4; Gov't Ex. 13; Gov't Ex. 17.)

[30] In light of the evidence, I agree with Respondent that ''the Government has failed to offer any evidence that Dr. Casanova was somehow part of or even aware of Vincent Colangelo's alleged criminal activity and his alleged hidden ownership of All Pain and Coast to Coast.'' (Resp't Br. 29.)

[31] SA Gill testified that *www.sunbiz.org,* the Florida Web site that provides public information as to the form of a business entity, does not provide information as to who owns a corporation. (Tr. 80.) For instance, with respect to APM, Mr. Colangelo's name is not reflected on the Web site. (Tr. 81.)

started working at APM based on a referral from a friend of a friend and intended to conduct clinical research there. (Tr. 455–58.) He testified that he approached patients about possibly participating in clinical research, but acknowledged that he did not ask either SA Grafenstein or SA Cortes. (*See* Tr. 459.)

Respondent further testified that he was not APM's medical director and that his duties included evaluating patients, conducting an appropriate examination and providing appropriate care. (Tr. 416–17.) Respondent did not schedule appointments but believes APM accepted walk-in patients.[32] (*See* Tr. 417.) Respondent explained that most patients came to APM as referrals from other physicians and patients, and from Internet marketing.[33] (Tr. 29–30.) He testified that APM did not dispense controlled substances. (Tr. 24.) He worked one day per week and maintained a separate practice elsewhere. (Tr. 28, 455.)

Respondent testified that APM patients paid a fee of approximately $250 to see him, but those transactions were handled at the front desk. (Tr. 25–26, 456.) APM accepted insurance but most of the patients were private pay. (Tr. 29.) As compensation, Respondent received fifty dollars per patient he saw and did not receive bonuses. (Tr. 27–28; *see* Tr. 456.) Initially he saw between ten and fifteen patients per week, and later between twenty and thirty. (Tr. 28.) Respondent estimated that he saw approximately four or five patients per hour and worked from 2:00 p.m. to 9:00 p.m. (Tr. 28.)

Respondent testified that patients who came to APM brought medical records, to include MRI reports, to the best of their ability. (Tr. 31, 33.) Respondent required an MRI report from every patient. (Tr. 31.) Maite was responsible for verifying the validity of each MRI report. (Tr. 31–32.)

Respondent testified that he performed a physical examination and ''made a diagnosis and we talked about how we're going to progress and provide care'' for each patient he saw. (Tr. 32.) Respondent further testified that paperwork provided to each patient addressed the risks and benefits associated with a course of treatment. (Tr. 32–33.) In addition, Respondent testified that a ''treatment plan was formulated either in terms of the documentation on the paperwork or mentally in terms of the documentation and a plan and a process.'' (Tr. 33–34.)

Respondent testified to being familiar with the term ''track marks,'' which he said referred to people making injections on their arms. (Tr. 34.) He testified that he checked his patients for track marks.[34] (Tr. 34–35.)

Respondent ended his relationship with APM because after a period of time, I was told or I explained that I had certain requirements and so forth and that I was looking to try to provide care on a multi-disciplinary level with a variety of different specialties and so forth and as I proceeded to go on, some of these things were not coming to fruition so I decided to part ways. (Tr. 455.)

(c) Undercover Patient Visits to APM

(i) SA Grafenstein February 16, 2010 Undercover Visit to APM

SA Grafenstein[35] visited APM in an undercover capacity on February 16, 2010, posing as a patient.[36] Aside from noting that APM staff measured his vital signs and did not supervise him while he submitted a urine sample (*see* Tr. 240), SA Grafenstein's testimony related primarily to conversations he overheard in the waiting area and his visit with Respondent.

Among approximately fifteen people in the waiting area, SA Grafenstein conversed with patient [M.B.],[37] who indicated that existing patients were always seen before new patients (Tr. 228) and recommended that SA Grafenstein avoid the pharmacy Generic Drug Depot, because it was ''very hot right now and there were cops all over the place and that there were people standing outside trying to buy pills off the people who came, who just got their prescriptions filled there.'' (Tr. 228–29.) [M.B.] also asked SA Grafenstein to provide a urine sample for [M.B.]'s drug test, and SA Grafenstein complied. (Tr. 231–32.) APM staff left the restroom unsupervised and [M.B.] later left the clinic carrying more than one prescription. (Tr. 232.)

Another patient recounted submitting urine mixed with water from a toilet for a drug screen. (Tr. 235.) SA Grafenstein also testified that patient [M.I.] was carrying a Gatorade bottle containing urine of a person who had driven [M.I.] to the clinic ''because the individual who was seeing the doctor told him that he would give him half of whatever he was prescribed for driving him down there.'' (Tr. 239.) [M.I.] stated that ''two hours prior to that specific time he had gone home and did cocaine, not knowing that he'd have to take a drug test. And after he learned that, he ingested bleach to attempt to detoxify it so that he would be able to beat the drug test.'' (Tr. 237.) SA Grafenstein testified that Respondent later issued a prescription to [M.I.] (Tr. 239.) SA Grafenstein also related overhearing that ''if you failed the drug test for marijuana, you could pay $50 * * * and the administrator would make your hot, or your failed test, clean.'' (Tr. 237.)

SA Grafenstein also testified to his interactions with Respondent, which began approximately six hours after the agent arrived at APM. (*See* Tr. 220, 241–44, 247.) SA Grafenstein indicated he was in ''[a] lot of pain. My upper [back] is bother [sic] me, a little sore. My lower, nothing that's * * * like excruciating * * * sometimes I can't move my neck.'' (Gov't Ex. 8 at 33.) He indicated his pain without medication was a two and with medication was a zero, on a scale of one to ten. (*See* Tr. 242.) After reviewing the patient's MRI report, Respondent said ''I can't tell you anything about your neck 'cause you don't have an MRI.'' (Gov't Ex. 8 at 34; *see* Tr. 241.) ''The one you have there tells me that you have some problems in your low back * * * It tells me nothing about your neck.'' (Gov't Ex. 8 at 35.) But Respondent did not order an MRI of the patient's neck. (Tr. 244.)

Respondent directed SA Grafenstein to raise his hands and inhale and listened to his breathing. (Tr. 242; Gov't Ex. 8 at 37, 39.) He also felt along SA Grafenstein's back and neck while asking him to bend over, and performed reflex tests. (Tr. 242–43; Gov't Ex. 8 at 40.)

SA Grafenstein had written in his patient paperwork that he was currently taking 180 oxycodone 30 mg tablets. (Gov't Ex. 10 at 3, 4.) Respondent asked whether the medication was working (Gov't Ex. 8 at 42), to which SA Grafenstein responded in the affirmative and orally requested Xanax. (Gov't Ex. 8 at 42; Tr. 243.) Respondent inquired ''how much Xanax are you taking? 'Cause it didn't get put on there, but I'll, I'll get it for you.'' (Gov't Ex. 8 at 42.) SA Grafenstein responded that he was taking about sixty. (Gov't Ex. 8 at 42.)

Respondent issued SA Grafenstein prescriptions for 180 Roxicodone 30 mg tablets and 60 Xanax 2 mg tablets, reflecting the medications SA Grafenstein had indicated on his patient intake form and requested orally. (Tr. 216, 243; Gov't Ex. 9; Gov't Ex. 10 at 3, 4.) The patient's urine drug screen, contained in the patient file, reflected that SA Grafenstein tested negative for both oxycodone and alprazolam. (Tr. 427–28, 477.)

(ii) SA Cortes February 16, 2010 Undercover Visit to APM

SA Cortes[38] visited APM in an undercover capacity on February 16, 2010, posing as a patient.[39] (*See generally* Jt. Stip. 7.) Aside from noting that office staff measured his vital signs, that he was not supervised while submitting a urine sample and that he overheard a staff member discussing different methods to inject heroin (Tr. 273–75), SA Cortes's testimony related primarily to his visit with Respondent.

Respondent called SA Cortes into his office after a wait of more than five hours. (Tr. 273, 275.) SA Cortes stated that he was ''not really hurt, doc. Um * * * what I'm experiencing

[32] Respondent equivocated on this point, also testifying that the clinic at one point accepted only scheduled appointments and did not accept walk-ins. (Tr. 28–29.)

[33] Respondent never saw the Internet marketing, but the owners told him about it. (Tr. 29.)

[34] In addition, the refund policy at APM indicates that refunds will not be granted for ''signs of IV drug use (track marks).'' (Gov't Ex. 10 at 5.)

[35] SA Grafenstein has worked as a DEA SA for approximately two years. (Tr. 206.) He previously worked for approximately eight and one-half years as an officer with U.S. Customs and Border Protection and as a park ranger in Arlington County, Virginia. (Tr. 207.) He holds a bachelor's degree in criminal justice. (Tr. 207.)

[36] The following summary of SA Grafenstein's undercover visit to APM is supplemented in a later section of this Recommended Decision by additional findings of fact, and by conclusions of law.

[37] To protect patient privacy, initials are used in this Recommended Decision to refer to non-undercover patients.

[38] SA Cortes has worked as a DEA SA for approximately three years, following approximately ten years as a state trooper and local police officer. (Tr. 257.) He holds a bachelor's degree in criminal justice. (Tr. 257.)

[39] The following summary of SA Cortes's undercover visit to APM is supplemented in a later section of this Recommended Decision by additional findings of fact, and by conclusions of law.

is * * * more and more stiffness [in the shoulders and waist] * * * after each practice,'' elaborating that he had been studying martial arts. (Gov't Ex. 12 at 2–3; Tr. 276.) Upon inquiry from Respondent, SA Cortes stated that he worked at a warehouse and that lifting made his discomfort worse. (Gov't Ex. 12 at 6–7.) He rated his pain as a three or four while on medication, and an eight without medication, on a scale from one to ten. (*See* Gov't Ex. 12 at 6; Tr. 277–78.)

SA Cortes told Respondent that he had been taking Tylenol and one or two tablets of his girlfriend's hydrocodone per day. (Gov't Ex. 12 at 3–4; Tr. 276.) He stated that the hydrocodone hadn't been prescribed to him, to which Respondent stated ''I understand.'' (Gov't Ex. 12 at 9; *see* Tr. 278.) SA Cortes's urine drug screen, however, tested negative for hydrocodone. (*See* Tr. 482; *see also* Gov't Ex. 14 at 1.) Moreover, SA Cortes did not indicate he was taking any medication on his Pain Assessment Form. (Gov't Ex. 14 at 2.)

Respondent directed SA Cortes to sit on an examination table and inhale, listened to his breathing and tested his reflexes. (Tr. 278.) Respondent inquired whether SA Cortes was taking three or four hydrocodone pills per day, to which SA Cortes agreed, even though he had previously indicated taking only one or two per day. (*Compare* Gov't Ex. 12 at 9, *with* Gov't Ex. 12 at 3–4.) Respondent issued SA Cortes a prescription for 120 hydrocodone 7.5 mg tablets. (Gov't Ex. 13; Tr. 277, 288.) No diagnosis is listed on SA Cortes's Consent for Chronic Opioid Therapy form, nor are alternative treatments listed. (Tr. 398; *see* Gov't Ex. 14 at 8.)

4. Coast to Coast Healthcare Management (CCHM)

Respondent worked at CCHM in Deerfield Beach, Florida as an independent contractor for six to eight weeks in March to April 2010, approximately two weeks after he stopped working at APM. (*See* Tr. 22–23, 448, 456, 460; Gov't Ex. 20.) He testified that he was told there would be a possibility of conducting clinical research at CCHM.[40] (Tr. 459.) But ''one thing was said and then what happened was actually a different thing and that's why we decided to part on amicable terms.'' (Tr. 460; *see* Tr. 462.)

GS Langston [41] testified to participating in an investigation of Respondent by obtaining from Wood's Pharmacy in Margate, Florida prescriptions written by Respondent at CCHM. (Tr. 89–90; *see* Gov't Ex. 20.) GS Langston recovered the following prescriptions: 90 Percocet 10 mg tablets and 220 Roxicodone 30 mg tablets, dated April 6, 2010, for patient [C.C.] of Wallingford, Kentucky (Tr. 90, 95); 100 Roxicodone 15 mg tablets and 210 Roxicodone 30 mg tablets dated March 31, 2010, for patient [C.G.] of Essie, Kentucky (Tr. 91–92, 96); and 100 Roxicodone 15 mg tablets and 210 Roxicodone 30 mg tablets dated March 31, 2010, for patient [R.C.] of Helton, Kentucky (Tr. 92, 97; Gov't Ex. 20 at 5).

GS Langston testified that in light of her background, training and experience the prescriptions to patients [C.G.] and [R.C.] ''raised red flags to me because they are both prescribed by Dr. Casanova to patients in Kentucky that * * * apparently traveled from Kentucky to see Dr. Casanova at Coast to Coast in Deerfield Beach and then dr[o]ve to Margate to have their prescriptions filled.'' (Tr. 98.) As additional ''red flags,'' GS Langston noted that the prescriptions to [C.G.] and [R.C.] were for the same amounts of drugs (Tr. 98); the prescriptions were filled on the same day at close to the same time at the same pharmacy (Tr. 98); and the cities of Essie, Kentucky and Helton, Kentucky are located close to each other, and approximately 900 to 1000 miles and fifteen to sixteen hours away from Respondent's office in Deerfield Beach, Florida. (Tr. 99.) GS Langston testified that based on the foregoing factors it appeared that patients [C.G.] and [R.C.] traveled together from Kentucky to see Respondent. (Tr. 99.) GS Langston testified that although she had not seen the patients' medical files, the pharmacist should have regarded the prescriptions as suspicious. (Tr. 101.) She did concede, however, that without seeing the patients' medical files, she could not determine whether the prescriptions were medically necessary. (Tr. 103.)

(a) SA Saenz March 10, 2010 Undercover Visit to CCHM

SA Julia Saenz (SA Saenz) visited CCHM in an undercover capacity on March 10, 2010.[42] (*E.g.,* Jt. Stip. 8; Gov't Ex. 18 at 1; Tr. 442; Gov't Ex. 18 at 2, 4–6, 8–11, 13–15, 17.) Although the Government listed SA Saenz as a witness in its prehearing statement (ALJ Ex. 4 at 3, 14–16), the Government did not offer her testimony at hearing. (Tr. 11.) The undercover recording of SA Saenz's visit, her patient file and prescriptions Respondent issued to her were admitted without objection. (Tr. 84–85, 404; *see* Gov't Ex. 16, 17, 18.)

Respondent met with SA Saenz, first asking her age and how she hurt herself. (Gov't Ex. 16 at 4.) She stated she was thirty-four and that she injured herself a week earlier by lifting children at a daycare center where she worked. (*See* Gov't Ex. 16 at 4; Gov't Ex. 18 at 1.) SA Saenz indicated she was taking ''Tones, Dones'' (Gov't Ex. 16 at 7), which Respondent identified at hearing as slang for oxycodone. (Tr. 445.) Similarly, SA Saenz's patient paperwork indicates that she was taking Roxicodone 40 mg tablets eight times per day, oxycodone 15 mg tablets three times per day and 2 mg Xanax tablets twice per day. (Gov't Ex. 18 at 8.) Her urine drug screen, however, was negative for oxycodone. (Gov't Ex. 18 at 18; Tr. 446.)

SA Saenz also told Respondent that she had not seen any doctor for medicines. (Gov't Ex. 16 at 7; *see also* Gov't Ex. 18 at 1.) Respondent testified that he didn't ask SA Saenz how she had obtained the oxycodone and Xanax she had indicated taking. (*See* Tr. 495.) At the patient interview, SA Saenz repeatedly told Respondent that the pain did not interfere with her work or daily activities. (Gov't Ex. 16 at 6.) When Respondent asked SA Saenz whether she had ever taken narcotics before, she responded in the negative. (Gov't Ex. 16 at 13.) Respondent found it ''somewhat confusing that she did state just on tomes and domes and didn't state anything about an anxiolytic with this piece of information and her drug screen was negative.'' (Tr. 446.)

SA Saenz indicated that her pain was about a three while on ibuprofen and a five or six without, on a scale from one to ten. (*See* Gov't Ex. 16 at 7; *see also* Gov't Ex. 18 at 1.) She stated that she drank on occasion (Gov't Ex. 16 at 7–8) and indicated that she suffered from insomnia and depression. (Gov't Ex. 18 at 6.)

Respondent directed SA Saenz to take a deep breath, bend forward and indicate where she had pain. (Gov't Ex. 16 at 9.) She indicated pain on her left side and sensitivity in her neck. (Gov't Ex. 16 at 9.) Respondent demonstrated a stretching exercise and recommended an Icy Hot patch. (Gov't Ex. 16 at 10.) He then prescribed 90 Motrin 800 mg tablets, 90 Vicodin oral 5 mg—500 mg tablets and one pack containing twenty-one Medrol 4 mg tablets. (Gov't Ex. 17.) The portions of her Consent for Chronic Opioid Therapy (Consent Form) indicating a diagnosis and alternative treatment options are blank. (Tr. 494; Gov't Ex. 18 at 15.)

Near the end of the meeting, Respondent asked SA Saenz ''Why, for this kind of thing, you go to a pain management clinic? Why not go see a doctor?'' (Gov't Ex. 16 at 13.) She replied that she didn't have a doctor, and Respondent suggested she visit Respondent's Urgent Care Center. (Gov't Ex. 16 at 13–14.)

5. Government's Expert Testimony and Report

The Government presented the testimony of David M. Glener, M.D., along with a written report he prepared based on his review of patient files, audio recordings and transcripts associated with Respondent's treatment of three undercover agents posing as patients on February 16, 2010, and March 10, 2010. (*See* Tr. 321–22, 353–54.)

(a) Dr. Glener's Background

Dr. Glener, a physician, has practiced in St. Lucie, Florida since April 2002. (Tr. 306, 308–09.) He has practiced medicine for twenty-two years and pain medicine since 1993, and presently treats between six hundred and one thousand patients. (Tr. 309.) Dr. Glener has been board certified by the American Board of Anesthesiology since April 1995 and the American Board of Pain Medicine since February 2005.[43] (Tr. 307–

[40] Respondent did not ask SA Saenz if she would participate in a clinical research project when she visited him at CCHM, posing as a patient. (Tr. 461.)

[41] GS Langston testified to serving as a diversion group supervisor for the DEA for two years, where she manages a group of DIs in Palm Beach County, Broward County and five other counties. (Tr. 88.) She previously worked for approximately thirteen years as a DI and has worked for the DEA for approximately sixteen years. (Tr. 88–89.)

[42] The following summary of SA Saenz's undercover visit to CCHM is supplemented in a later section of this Recommended Decision by additional findings of fact and conclusions of law.

[43] Dr. Glener itemized the prerequisites of certification from the American Board of Anesthesiology to include graduating from an accredited medical school, possessing an unrestricted medical license, completing an internship in one of five categories, accumulating

Continued

08.) After graduating from New York Medical College in 1989, Dr. Glener completed an internship in general surgery and a residency in anesthesiology. (Tr. 309–10; *see* Gov't Ex. 21.) He later worked at two anesthesiology practices. (Tr. 309.) In addition to being a member of the American Society of Interventional Pain Physicians and its subsidiary Florida Society of Pain Physicians, Dr. Glener is a clinic assistant professor at Florida State University School of Medicine and an associate professor at the University of Central Florida School of Medicine. (Tr. 311.) He stays apprised of developments in the field of pain management by reviewing journals, speaking with colleagues, attending meetings of the Florida Society of Interventional Pain Physicians and completing continuing medical education courses. (Tr. 311–12.) Upon the Government's unopposed motion, I qualified Dr. Glener as an expert witness in the area of pain management. (Tr. 312–13.)

(b) Weight of Dr. Glener's Testimony

At hearing and in his post-hearing filings, Respondent raised the issue of whether Dr. Glener possessed bias or prejudice against Respondent. (*E.g.,* Resp't Br. 13–14, 27.) Respondent argues that Dr. Glener displayed ''textbook bias and prejudice[,] which substantially diminished the credibility of Dr. Gleaner [sic] and the weight to be given his testimony.'' (Resp't Br. 27.)

A review of the record reveals some evidence of bias on the part of Dr. Glener. For instance, when asked on cross-examination whether he would ''render an opinion [about Respondent] before looking at the materials'' relating to Respondent, such as patient files and undercover recordings (Tr. 342), Dr. Glener responded as follows:

It's not that I would leap to conclusions, but with all of these cases that I've reviewed in totality for both the state and a couple for the federal government now, I've seen a pattern emerge and there have been problems every single time I've reviewed them. So while I couldn't say with certainty or testify to that fact, I would say there would be a very high likelihood there'd be something inappropriate going on with Respondent's prescribing practices.[44]

(Tr. 343.) Dr. Glener ultimately testified that based on his review of Respondent's medical files, Respondent was incompetent as a physician. (*See* Tr. 357.)

In addition, when asked if he knew whether his expert review of Respondent's medical files was based on complete records, Dr. Glener stated:

I can't say with certainty if the file is complete or not. I asked for materials; materials were provided. Other medical records to these people or files may exist but I would strongly doubt it would change my opinion. In fact, I could tell you with certainty it would not change my opinion.[45]

(Tr. 344.)

In partial mitigation, Dr. Glener explained that the existence of a treatment plan in a file associated with a patient's subsequent visit would not alter his findings regarding Respondent's conduct ''because at the time the prescription was made, it is incumbent upon the physician to outline a treatment plan * * * I don't get that out of guidelines. That's called being a physician and those of us who are qualified to practice know that.'' (Tr. 345.) Although this statement reflects a legitimate basis for concluding that subsequent medical records would be irrelevant to evaluating whether Respondent's previous documentation practices were adequate, Dr. Glener's tone and demeanor at hearing corresponding to his comment about ''those of us who are qualified to practice'' did not reflect the completely dispassionate observations of an objective reviewer.[46]

In light of the evidence that Dr. Glener displayed a degree of prejudice or bias against Respondent, an initial issue is what weight to give Dr. Glener's testimony against Respondent, of whom Dr. Glener was unfailingly critical.[47] Having considered all the evidence, and as further discussed below, I find Dr. Glener's testimony to be generally credible notwithstanding any prejudice or bias, because it is wholly consistent with and is supported by the objective evidence of record.[48]

(c) Dr. Glener's Practice and Testimony Regarding the Florida Standard of Care

Dr. Glener testified that sixty percent of his patients are of retirement or Medicare age, and that he sees all different pain complaints. (Tr. 313.) The majority of his patients are referred to him by other physicians, who provide Dr. Glener with patients' medical records.[49] (Tr. 313–14.) With the exception of existing patients under emergency circumstances, Dr. Glener never sees walk-in patients. (Tr. 314.) Instead, new walk-in patients are scheduled for future appointments and Dr. Glener's office attempts to obtain the patients' prior medical records in the interim. (Tr. 314–15.)

Dr. Glener testified that except in ''extraordinary circumstances,'' he would not likely prescribe controlled substances to a patient who had not provided medical records. (Tr. 315.) Dr. Glener further testified that he would inquire what other physicians the patient has seen, and would consult the assembled medical records, which he noted ''sometimes have very little clinical value'' if they are irrelevant to the pain complaint. (Tr. 316–17.)

Dr. Glener testified that in his practice ''I take a history. * * * I ask [patients] to show me where they're having their pain and I ask them what's the quality of the pain, and I help them along with a few adjectives if they're at a loss for words.'' (Tr. 317.) He tries to ''ascertain what increases the pain, what decreases the pain, what other therapies they may have had * * * what medications have been tried and failed.'' (Tr. 317.) Dr. Glener further explained that ''I can't say, well, the patient uttered the word 'pain,' therefore, I'm entitled and I should be prescribing a controlled substance.'' (Tr. 396.)

After taking a patient history, Dr. Glener completes a physical examination, to include examination of the body system relevant to the patient's pain complaint.[50] (Tr. 316.) He also records ''a complete medical history, current medications, previous medical problems, previous surgeries [and] allergies.'' (Tr. 316.) Additionally, Dr. Glener records ''a complete history of present illness which is really the who, what, where, when and why of their pain.'' (Tr. 316.)

Following these steps, Dr. Glener forms a differential diagnosis and orders appropriate diagnostic studies, if necessary, and recommends a treatment plan. (Tr. 318.) He ''discuss[es] the most common side effects and adverse events that can occur as well as the benefit'' from proposed medications, although he ''do[es]n't go through every possible side effect right down to one or two percent incidents * * * .'' (Tr. 318.)

Dr. Glener emphasized that it is extremely important to document a patient's medical history, physical exam, diagnosis, treatment plan and discussion of risks and benefits,[51] adding that it is the standard of care, ''the law and it's appropriate medical practice.''[52] (Tr. 318–319.) Dr. Glener allowed that the medical record need not appear like a transcript from a court proceeding, but should be a ''useful tool'' reflecting ''a cogent record of what has transpired, what the physician was thinking at the time.'' (Tr. 319.) In case the patient later moves to a

three years of training in anesthesiology and passing written and oral examinations. (Tr. 307.) The certification process for the American Board of Pain Medicine is slightly different, in ways not pertinent to the instant proceeding. (*See* Tr. 308.)

[44] Dr. Glener conceded that he was unfamiliar with Respondent before the Government asked him to testify. (Tr. 321).

[45] Moreover, when asked if it was important to review the complete medical files of the patients he was asked to analyze, Dr. Glener answered in the negative. (Tr. 343.)

[46] After opining that Respondent's behavior was consistent with that of a pill-mill physician (Tr. 352), Dr. Glener was asked on cross-examination ''Would it also be fair to say that you don't like what you call pill mill doctors?'' (Tr. 353.) Dr. Glener responded: ''I don't like what they do, I don't like what they represent, I don't like the damage they inflict on society and individuals in the practice of medicine as a whole, but other than that, I'm sure they're great people.'' (Tr. 353.)

[47] Dr. Glener testified at one point that ''I was just trying to illustrate that the doctor's incompetent, not that he—whether he was or—treating pain. * * * [H]e's clearly incompetent.'' (Tr. 357.)

[48] For instance, as discussed below, Dr. Glener's observations about missing documentation are fully supported by the objective evidence of record, to include patient files and undercover recordings.

[49] Dr. Glener explained that he obtains patients' prior medical records if they have not already been provided. (Tr. 313.)

[50] ''If there was a question to their overall health,'' Dr. Glener testified, ''then I'd probably listen to their heart, maybe their lungs.'' (Tr. 316.)

[51] Dr. Glener finds it more effective to conduct an oral discussion of risks and benefits of opioid therapy, but conceded that not all doctors rely on verbal consent. (Tr. 399.) If he were to use a written consent form, however, he testified that he would ensure its completeness. (Tr. 399.)

[52] Dr. Glener testified that taking the patient's medical history, performing a physical exam, formulating a diagnosis and treatment plan and discussing risks and benefits of a treatment plan is essential whether or not treating a patient with controlled substances. (Tr. 319.)

different physician, ''it's incumbent upon [the physician] to document [the physician's] thought process * * *.'' (Tr. 319.)

Dr. Glener does not treat all his patients with controlled substances. (Tr. 319–20.) He recognizes, however, that ''[t]he Florida Board of Medicine considers prescribing or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds.'' (Gov't Ex. 22 at 2.) As alternative therapies to controlled substances, Dr. Glener recommends stretching, over-the-counter drugs, physical therapy, chiropractic and massage therapy, interventional pain procedures,[53] nerve blocks and referral to the appropriate medical specialist.[54] (Tr. 320.)

(d) Dr. Glener's Review of Respondent's Patient Files, Generally

Dr. Glener reviewed patient files, audio recordings and transcripts reflecting consultations with Respondent by DEA Special Agents using the undercover names Julia Sanchez, Eugene O'Neil, and Alfredo Mondego.[55] (*See* Tr. 321, 353–54; Gov't Ex. 14.) His review of the patient files pertained to the adequacy of Respondent's performance across elements such as history of present illness, physical examination, medical and surgical history, family history, social history and possibly a review of systems, with reference to the Florida Standards for the Use of Controlled Substances for the Treatment of Pain (Florida Standards), Fla. Admin. Code Ann. r. 64B8–9.013 (2003). (Tr. 322–23; Gov't Ex. 22 at 2; *see* Gov't Ex. 23.) Based on his review, Dr. Glener prepared a report (*see* Gov't Ex. 22) and concluded that ''[i]n all of the cases, the doctor prescribed controlled substances outside the usual course of professional practice or for other than a legitimate medical purpose.'' (Tr. 338–39.)

Dr. Glener called the level of documentation in Respondent's patient files ''substandard,'' ''cookie cutter'' and ''very sketchy.'' (Tr. 337.) He opined that with respect to each patient, Respondent ''did not support the need for controlled substances with appropriate documentation establishing a valid medical need and treatment plan.'' (Gov't Ex. 22 at 2.) He criticized Respondent for prescribing controlled substances ''rather than refer[ring] to [a] physician with the appropriate expertise'' to include a physical therapist, orthopedic surgeon, physiatrist, neurologist, neurosurgeon or interventional pain specialist'' (Gov't Ex. 22 at 2) and testified that there was no record that Respondent made any such referrals. (Tr. 336–37.) Although acknowledging that the patient files contained medical histories and diagnostic, therapeutic or laboratory results (Tr. 377–78), Dr. Glener called Respondent's histories and physical examinations ''perfunctory.'' (Gov't Ex. 22 at 2.) He further testified that Respondent ''did not by professional standards perform a proper evaluation as has been defined by my medical training and experience.'' (Tr. 378.)

In addition, Dr. Glener testified that every time a physician prescribes an opioid, there should be a treatment plan. (Tr. 382.) Dr. Glener testified that with respect to all three undercover patients, Respondent did not discuss the risks and benefits of medications he prescribed; did not take the appropriate history; did not perform an appropriate physical examination; did not document a treatment plan other than the prescription of controlled substances;[56] and did not indicate a rationale for treatment. (Tr. 334–35, 379.)

Dr. Glener concluded that ''[a]fter reviewing the totality of the above three patient encounters, Dr. Casanova has established a pattern of behavior that indicates he regularly prescribes controlled substances outside the usual course of professional practice or for other than a legitimate medical purpose.'' (Gov't Ex. 22 at 2.) As to all three patients, Dr. Glener testified that ''the treatment definitely deviated from the standard of care, was not appropriate in all cases and the focus of treatment appeared to be the prescription of controlled substances.''[57] (Tr. 324–25.)

6. Additional Aspects of Respondent's Professional History and Outlook

In addition to his employment history as summarized previously, Respondent testified that he gained experience dealing with acute and chronic pain patients and treating them with opioids while working at Westchester Hospital in Florida. (Tr. 414.) During this time he familiarized himself with the Florida Standards. (Tr. 414.) With respect to the three undercover patients at CCHM and APM, Respondent testified that he executed a treatment objective, not a treatment plan:

Q: And you've testified that you executed a treatment plan, isn't that true?
A: The treatment objective.
Q: You executed a treatment objective?
A: Correct.
Q: And why didn't you execute a treatment plan?
A: Because as I've mentioned previously, a treatment plan is something in my opinion that differs from other physicians. I believe that a treatment plan doesn't happen over one visit, it happens over time when you garner all the information and collect all the data and put it together and slowly but surely whittle things down and put everything together.

(Tr. 467.) He elaborated that ''a treatment objective begins the treatment plan and that develops over time.'' (Tr. 467.)

In addition, Respondent testified that he no longer works at any pain management facilities other than MEC, and that ''I don't have any plans to ever do that again.'' (Tr. 448.) He testified that he would be willing to enter into an agreement with the Government that he would never work in a pain clinic and that he would never prescribe Schedule II opioid narcotic controlled substances.[58] (Tr. 452–53.)

Finally, Respondent testified that while working at APM and CCHM, he turned away a large number of patients ''that I thought might have issues with medications, issues potentially with the injection of medications and so forth,'' to include patients presenting with track marks. (Tr. 500.)

IV. Discussion

A. The Applicable Statutory and Regulatory Provisions

The CSA provides that any person who dispenses (including prescribing) a controlled substance must obtain a registration issued by the DEA in accordance with applicable rules and regulations.[59] ''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 his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner'' with a corresponding responsibility on the pharmacist who fills the prescription.[60] It is unlawful for any person to possess a controlled substance unless that substance was obtained pursuant to a valid prescription from a practitioner acting in the course of his professional practice.[61] Federal law also provides a detailed framework for keeping records of controlled substances a practitioner orders, receives and dispenses. *E.g.,* 21 C.F.R. §§ 1304.11, 1304.21, 1304.22. In addition, I conclude that the reference in 21 U.S.C. § 823(f)(5) to ''other conduct which may threaten the public health and safety'' would as a matter of statutory interpretation logically encompass the factors listed in § 824(a).[62]

B. The Public Interest Standard

The CSA, at 21 U.S.C. § 824(a)(4), provides, insofar as pertinent to this proceeding, that the Administrator may revoke a COR if she finds that the registrant's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. § 823(f). In determining the public interest, the Administrator is required to consider the following factors pursuant to Section 823(f):

[53] An interventional pain procedure is ''where I actually do a procedure to make the patient better instead of giving [her] a medication or a noninvasive therapy * * *. It involves the spine and at least a three and a half-inch needle, but it's not exclusive to that.'' (Tr. 320.)

[54] Dr. Glener testified that the appropriate medical specialist is often an orthopedic surgeon, neurologist, neurosurgeon, physiatrist, internist or infectious disease specialist. (Tr. 320.)

[55] These materials reflect undercover visits to see Respondent by SA Saenz, SA Grafenstein and SA Cortes.

[56] The only exception Dr. Glener noted was that Respondent prescribed ''an inappropriate combination of high doses of nonsteroidals and steroidal medications * * * with a recommendation for an Icy Hot patch'' to SA Saenz. (Tr. 335.)

[57] Dr. Glener provided additional and specific analysis of Respondent's prescribing practices with respect to each patient. This analysis is discussed in a later section of this Recommended Decision.

[58] Respondent also testified that he ''could consider'' agreeing not to prescribe Schedule III controlled substances, and that he would be willing to agree not to prescribe Schedule II–III medications for a limited period of years. (Tr. 499, 502.)

[59] 21 U.S.C. § 822(a)(2); 21 U.S.C. § 802(10).

[60] 21 C.F.R. § 1306.04(a).

[61] 21 U.S.C. § 844(a).

[62] *See Kuen H. Chen, M.D.,* 58 Fed. Reg. 65,401, 65,402 (DEA 1993).

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to 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.

As a threshold matter, the factors specified in Section 823(f) are to be considered in the disjunctive: the Administrator may properly rely on any one or a combination of those factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or an application for registration denied. *See David H. Gillis, M.D.,* 58 Fed. Reg. 37,507, 37,508 (DEA 1993); *see also D & S Sales,* 71 Fed. Reg. 37,607, 37,610 (DEA 2006); *Joy's Ideas,* 70 Fed. Reg. 33,195, 33,197 (DEA 2005); *Henry J. Schwarz, Jr., M.D.,* 54 Fed. Reg. 16,422, 16,424 (DEA 1989). Application of the public interest factors requires an individualized determination and assessment of prescribing and recordkeeping practices that are ''tethered securely to state law . . . and federal regulations.'' *Volkman v. DEA,* 567 F.3d 215, 223 (6th Cir. 2009). Additionally, in an action to revoke a registrant's COR, the DEA has the burden of proving that the requirements for revocation are satisfied.[63] The burden of proof shifts to the respondent once the Government has made a prima facie case.[64]

C. The Factors To Be Considered

Factors 1 and 3: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority and Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution or Dispensing of Controlled Substances

In this case, regarding Factor One, it is undisputed that Respondent currently holds a valid unrestricted medical license in Florida and has never been disciplined by the Florida Department of Health. (*E.g.,* Jt. Stips. 2, 3; Tr. 448–49.) Although not dispositive, Respondent's possession of a valid unrestricted medical license in Florida weighs against a finding that Respondent's continued registration would be inconsistent with the public interest. *See Robert A. Leslie, M.D.,* 68 Fed. Reg. 15,227, 15,230 (DEA 2003) (identifying state licensure as necessary but not sufficient condition for registration).

Regarding Factor Three, there is no evidence that Respondent has ever been convicted under any federal or state law relating to the manufacture, distribution or dispensing of controlled substances. (*See* Tr. 502.) I therefore find that Factor Three, although not dispositive, *see Leslie,* 68 Fed. Reg. at 15,230, weighs against a finding that Respondent's continued registration would be inconsistent with the public interest.

Factors 2 and 4: Respondent's Experience in Handling Controlled Substances and Compliance with Applicable State, Federal or Local Laws Relating to Controlled Substances

As Respondent correctly argues, the record reflects that Respondent ''has significant experience in prescribing controlled substances. Dr. Casanova has practiced medicine for approximately [twenty] years and, in that time, has treated both chronic and acute pain and has prescribed controlled substances for the treatment of pain.'' (Resp't Br. 30–31.) But the record also contains substantial evidence that on multiple recent occasions, Respondent failed to comply with applicable federal and state law relating to keeping records of and prescribing controlled substances.

1. Respondent's Recordkeeping Practices

Pursuant to federal regulations such as 21 C.F.R. §§ 1304.03, 1304.11(a), 1304.21(a), 1304.22(a)(2)(iv), 1304.22(a)(2)(ix), and 1304.22(c), a registered individual practitioner is required to maintain records of controlled substances in Schedules II–V that are dispensed and received, including the number of dosage units, the date of receipt or disposal, and the name, address and registration number of the distributor. It is unlawful to fail to make, keep or furnish required records.[65] Under longstanding Agency precedent, ''the failure to comply with record keeping requirements is a basis for revoking a registration.'' *Alexander Drug Co.,* 66 Fed. Reg. 18,299, 18,303 (DEA 2001) (citing *Singer-Andreini Pharmacy, Inc.,* 63 Fed. Reg. 4,668 (DEA 1998); *Arthur Sklar, d/b/a King Pharmacy,* 54 Fed. Reg. 34,623 (DEA 1989); *Summer Grove Pharmacy,* 54 Fed. Reg. 28,522 (DEA 1989); and *The Boro Pharmacy and Bell Apothecary,* 53 Fed. Reg. 15,151 (DEA 1988)). The CSA's emphasis on recordkeeping constitutes '''an attempt to regulate closely the distribution of certain substances determined by Congress to pose dangers, if freely available, to the public at large.''' *United States v. Poulin,* 926 F. Supp. 246, 250 (D. Mass. 1996) (quoting *United States v. Averi,* 715 F. Supp. 1508, 1510 (M.D. Ala. 1989)). The evidence offered at hearing reflected a number of recordkeeping violations by Respondent.

(a) February 22, 2011 Absence of Biennial Inventory at MEC

DEA registrants are required to maintain ''a complete and accurate record of all controlled substances on hand * * *.'' 21 C.F.R. § 1304.11(a). They must ''take a new inventory * * * at least every two years.'' 21 C.F.R. § 1304.11(c). The inventory ''must be kept by the registrant and be available[] for at least 2 years'' from the date of its creation. 21 C.F.R. § 1304.04(a). As noted above, the record reflects that DI Stockmann conducted an inspection of MEC on February 22, 2011, and he found ''no evidence of a biennial inventory for that registered location of the controlled substances on hand.'' (Tr. 108, 128, 137.) The absence of a biennial inventory as of February 22, 2011, constitutes a violation of these requirements. *See* 21 C.F.R. § 1304.11(a).

(b) March 29, 2011 Discovery of McBride Biennial Inventory

Federal Regulations require that DEA registrants ''take a new inventory * * * at least every two years.'' 21 C.F.R. § 1304.11(c); *see also* 21 C.F.R. § 1304.04(a) (''every inventory * * * must be kept by the registrant and be available * * * for at least two years from the date of such inventory * * *'').[66] ''The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.'' 21 C.F.R. § 1304.11(a). The record reflects that DI Graumlich conducted an accountability audit of MEC on March 29, 2011, covering a period from November 16, 2009, to March 29, 2011. (*E.g.,* Tr. 148, 149.) At this audit, Respondent's staff produced a biennial inventory completed by Mr. McBride of Linear Solutions, dated November 16, 2009.[67] (Tr. 153–54, 163; Gov't Ex. 19(b).) DI Graumlich testified, and the document reflects, that the inventory does not indicate whether it was taken at the opening or closing of the business day, in violation of 21 C.F.R. § 1304.11(a). (Tr. 164, 181, 199.) The evidence also reflected that Respondent's biennial inventory did not go back a full two years from the date of the audit. (Tr. 200.) Respondent ''has not disputed the results of the audit and inspection, but instead has acknowledged that he will take steps to cure the violations * * *.'' (Resp't Br. at 30.) Consistent with the consensus reached by the parties, I find that Respondent has violated 21 C.F.R. § 1304.04(a) in failing to keep a biennial inventory covering a full two years of activity.

(c) March 29, 2011 Audit Results Indicating Shortage and Overage

The March 29, 2011 audit of Respondent's controlled substances and records covering a period from November 16, 2009, to March 29, 2011, revealed a number of irregularities. DI Graumlich found that Respondent was accountable for thirty-five bottles of Guaifenesin Ac but could only account for twenty-seven, resulting in a shortage of eight bottles or 22.86 percent. (Tr. 177, 198–99; Gov't Ex. 19(e).) Moreover, with respect to Hydrocodone Apap 5/500 30-count bottle, the audit revealed an overage of one bottle, thirty dosage units or 0.89 percent. (Tr. 177–78, 197–98.) Regarding Hydrocodone Apap 7.5/500 30-count bottles, the audit revealed

[63] *See* 21 CFR § 1301.44(e) (2011).

[64] *See Medicine Shoppe—Jonesborough,* 73 Fed. Reg. 364, 380 (DEA 2008); *see also Thomas E. Johnston,* 45 Fed. Reg. 72,311, 72,311 (DEA 1980).

[65] 21 U.S.C. § 842(a)(5).

[66] Although the Government's prehearing statements did not explicitly cite 21 C.F.R. § 1304.04, the Government did allege violations of recordkeeping regulations, to include failure to maintain complete and accurate records (*see* ALJ Ex. 7 at 2), as well as failure to comply with requirements for biennial inventories (*see* ALJ Ex. 7 at 3). In the absence of an objection by Respondent, there is no basis to depart from the conclusion that Respondent was fairly apprised ''that this allegation would be litigated.'' *CBS Wholesale Distribs.,* 74 Fed. Reg. 36,746, 36,749 (DEA 2009).

[67] The record is unclear as to why this report was not made available to DI Stockmann on February 22, 2011.

a shortage of five bottles, 150 dosage units or four percent. (Tr. 178–79, 198.) With respect to Zolpidem, the audit revealed a shortage of three bottles, 180 dosage units or twenty-five percent. (Tr. 180, 199.)

Although various factors can contribute to audit results indicating a shortage, to include recordkeeping issues, theft or loss (Tr. 180), DEA registrants are nevertheless ''required to maintain records of all controlled drugs received, distributed or otherwise dispensed. And if we have records of all the drugs received or distributed, the account should zero out.'' (Tr. 180–81.) *See* 21 C.F.R. §§ 1304.11(a) (''Each inventory shall contain a complete and accurate record of all controlled substances on hand * * *.''), 1304.21(a) (registrants required to keep ''a complete and accurate record of each such substance * * * received, sold, delivered * * * or otherwise disposed of * * *.''), 1304.22(c) (''records shall be maintained of the number of units * * * dispensed * * *.''). The evidence of two shortages in Respondent's controlled substances records, one by more than twenty percent, and one overage, is inconsistent with the requirement to maintain accurate and complete records. *See* 21 C.F.R. §§ 1304.04(a), 1304.22(c).

(d) Twenty Undated Receiving Invoices and Two Missing Stat Rx Invoices

In addition to the foregoing issues, DI Graumlich testified that approximately twenty of the receiving invoices provided by Respondent did not reflect the date received. (Tr. 181.) DI Graumlich gave the clinic ''several'' opportunities to provide missing records, including emailing MEC's office manager Ms. Egan after the inspection and asking whether the clinic had located the missing documents. (Tr. 202.) He again requested invoices, ''and we were never provided with any other documents. According to Ms. Egan, I believe they could not find the other binder.'' (Tr. 194.) DI Graumlich further testified that the March 29, 2011 audit revealed ''two receiving invoices that they did not have a record of and we found that out when we got a printout of their receipts from Stat Rx, their distributor * * *.'' (Tr. 182.)

Federal regulations require that practitioners ''shall maintain on a current basis a complete and accurate record of [controlled substances] received * * *, '' 21 C.F.R. § 1304.21(a), further providing that ''[i]n recording dates of receipt * * * the date on which the controlled substances are actually received * * * shall be used as the date of receipt or distribution of any documents of transfer (e.g., invoices or packing slips).'' *Id.* at § 1304.21(d). Respondent's failure to indicate the date received on approximately twenty receiving invoices constitutes a violation of 21 C.F.R. § 1304.21. Moreover, the evidence that Respondent had no records of two receiving invoices from Stat Rx reveals a violation of the requirement to keep a current, ''complete and accurate record of each such substance * * * received, sold, delivered * * * or otherwise disposed of * * *.'' *Id.* at § 1304.21(a).

(e) Evidence of Compliant Records

The results of the audit with respect to the InstyMeds machine reflected no discrepancies.[68] (Tr. 195.) There were no discrepancies in the audit of Zolvit oral solution, although Respondent's staff ''originally didn't have any records for that but we had them get copies of their records from their vendor.'' (Tr. 197.)

(f) Conclusion With Respect to Recordkeeping

The record reveals multiple violations of federal recordkeeping regulations.[69] This conclusion weighs in favor of a finding under Factors Two and Four that Respondent's continued registration would be inconsistent with the public interest.

2. Respondent's Prescribing Practices at APM and CCHM

The evidence at hearing centered in substantial part on office visits by three undercover agents posing as patients in February and March 2010. In addition to the testimony of two of the agents and records associated with all three agents, the Government presented the testimony of a medical expert witness, Dr. Glener. Dr. Glener provided a written report and testified as to his review of the three patient files and associated undercover recordings and medical records, opining whether Respondent prescribed controlled substances for a legitimate medical purpose in the usual course of professional practice. Respondent also testified as to his standard of care and treatment for each of the three patients, along with his past experience.

Evaluation of Respondent's prescribing conduct in this case is governed by federal and state law. The applicable standard under federal law is whether Respondent's prescriptions for controlled substances were ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 C.F.R. § 1306.04(a) (2011). This standard of care refers to that generally recognized and accepted in the medical community rather than a standard unique to the practitioner. *Robert L. Dougherty, M.D.,* 76 Fed. Reg. 16,823, 16,832 n.11 (DEA 2011) (citing *Brown v. Colm,* 11 Cal.3d 639, 642–43 (1974)). Although state law is a relevant factor in determining whether a practitioner is acting in the ''usual course of professional practice,'' it is appropriate in the context of an inquiry under federal law to also consider ''generally recognized and accepted medical practices'' in the United States. *Bienvenido Tan, M.D.,* 76 Fed. Reg. 17,673, 17,681 (DEA 2011). Moreover, ''[u]nder the CSA, it is fundamental that a practitioner must establish a bona fide doctor-patient relationship in order to act 'in the usual course of * * * professional practice' and to issue a prescription for a 'legitimate medical purpose' as required by 21 C.F.R. § 1306.04(a).'' *Gilbert Eugene Johnson, M.D.,* 75 Fed. Reg. 65,663, 65,666 (DEA 2010) (citing *Patrick W. Stodola, M.D.,* 74 Fed. Reg. 20,727, 20,731 (DEA 2009) (citing *United States v. Moore,* 423 U.S. 122, 135, 143 (1975))). ''The CSA generally looks to state law to determine 'whether a doctor and patient have established a bona fide patient relationship.'" *Id.; see also Kamir Garces-Mejias, M.D.,* 72 Fed. Reg. 54,931, 54,935 (DEA 2007); *United Prescription Services, Inc.,* 72 Fed. Reg. 50,397, 50,407 (DEA 2007).

As for the principles of Florida law applicable to this case, the Florida Standards constitute, as Respondent correctly argues, the ''guiding law as to prescribing controlled substances.'' [70] (Resp't Br. 24, 31.) The Florida Standards emphasize the importance of ''prescribing, dispensing, [and] administering controlled substances including opioid analgesics[] for a legitimate medical purpose[] that is supported by appropriate documentation establishing a valid medical need and treatment plan.'' Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003). The Florida Standards further provide that ''[p]hysicians should be diligent in preventing the diversion of drugs for illegitimate purposes,'' and that ''prescribing must be based on clear documentation of unrelieved pain * * * .'' *Id.* at r. 64B8–9.013(1)(d)–(e). In support of these principles, the Florida Board of Medicine has adopted a list of standards for the use of controlled substances for pain control. *See id.* at r. 64B8–9.013(3). Pertinent obligations include the following:

(a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record should also document the presence of one or more recognized medical indications for the use of a controlled substance.

(b) Treatment Plan. The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned * * * .

(c) Informed Consent and Agreement for Treatment. The physician should discuss the risks and benefits of the use of controlled substances with the patient * * * .

* * * * *

(e) Consultation. The physician should be willing to refer the patient as necessary for additional evaluation and treatment * * * . Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion * * * .

(f) Medical Records. The physician is required to keep accurate and complete records to include, but not be limited to:

[68] The audit reflected Respondent's office's change from using Linear Solutions to InstyMeds. (*See* Tr. 156; Gov't Ex. 19(e).)

[69] *E.g.,* 21 C.F.R. §§ 1304.04(a), 1304.11(a) & (c).

[70] Due to the effective dates of the applicable state regulation, Florida Administrative Code Rule 64B8–9.013 (2003) applies to conduct between October 19, 2003, and October 16, 2010; Rule 64B8–9.013 (2010) applies to conduct thereafter. *See generally https://www.flrules.org/gateway/ruleNo.asp?id=64B8–9.013.*

1. The medical history and physical examination, including history of drug abuse and dependence, as appropriate;
2. Diagnostic, therapeutic, and laboratory results;
3. Evaluations and consultations;
4. Treatment objectives;
5. [D]iscussion of risks and benefits;
6. Treatments;
7. Medications (including date, type, dosage, and quantity prescribed);
8. Instructions and agreements; and
9. Periodic Reviews * * * .

Fla. Admin. Code Ann. r. 64B8–9.013(3) (2003). ''Each case of prescribing for pain will be evaluated on an individual basis.'' Fla. Admin. Code Ann. r. 64B8–9.013(1)(f).

Turning to the evidence in the instant case, the record reveals violations of federal and state law relating to Respondent's prescribing of controlled substances to undercover agents posing as patients at APM and CCHM.

(a) SA Grafenstein February 16, 2010 Undercover Visit to APM

The record reflects that SA Grafenstein visited APM in an undercover capacity on February 16, 2010. (Tr. 208.) He arrived at approximately 1:45 p.m. and provided the receptionist with a Florida driver's license, $250 and a copy of a legitimate MRI report of another person's body labeled with SA Grafenstein's undercover name. (Tr. 208, 221.) He filled out patient intake forms, including forms that asked about his pain, on which he indicated occasional aching and that he was taking 180 oxycodone 30 mg tablets. (Tr. 222; *see* Gov't Ex. 10 at 3.) After submitting the forms to the receptionist, SA Grafenstein sat down in the waiting area. (Tr. 222.)

Approximately fifteen people were in the waiting area when SA Grafenstein first arrived. (Tr. 223.) He conversed with a patient named [M.B.][71] (Tr. 226.) SA Grafenstein testified that [M.B.] remarked that it was [M.B.]'s second visit to the clinic and that at the first visit, he waited approximately five hours before a doctor saw him. (Tr. 227–28.) [M.B.] further indicated that follow-up patients were always seen before new patients, regardless of the order they arrived. (Tr. 228.) [M.B.] also advised SA Grafenstein to go to Rise and Shine Pharmacy in Pembroke Pines, Florida, because ''he said that it was cheap and that you can get whatever you wanted to get there.'' (Tr. 228.) [M.B.] also said to ''stay away from a pharmacy called Generic Drug Depot, because it was very hot right now and there were cops all over the place and that there were people standing outside trying to buy pills off the people who came, who just got their prescriptions filled there.'' (Tr. 228–29.) Based on his training and experience, SA Grafenstein believed [M.B.]'s remarks indicated that some APM patients engaged in illegal activity. (Tr. 229.)

While waiting to be called by a doctor, SA Grafenstein stepped outside to the front of the clinic to make a phone call. (Tr. 230.) ''[W]hile I was on the phone * * * a security guard * * * came up to me and said that I couldn't talk in front of the building, but I could go to the side or to the rear of the building and continue my phone call.'' (Tr. 230.)

Upon returning to the waiting area, [M.B.] approached SA Grafenstein and asked him to provide a urine sample for [M.B.]'s drug test. (Tr. 231–32.) SA Grafenstein followed [M.B.] to the restroom, entering and partially closing the door. (Tr. 232.) [M.B.] gave SA Grafenstein [M.B.]'s cup, and SA Grafenstein urinated into it, closed it, placed it on the sink and left. (Tr. 232.) [M.B.] then entered the restroom and picked up the cup and submitted it as [M.B.]'s own. (Tr. 232.) No staff members supervised or watched the restroom during this interchange. (Tr. 232.) SA Grafenstein later saw [M.B.] leaving the clinic carrying more than one prescription. (Tr. 232.)

SA Grafenstein also recounted that a person in the waiting area ''was informing the group as a whole that when he had to take his urine test * * * he had the cup in his hand but he forgot to go to the bathroom in it, so once he realized it after he was done, he scooped into the toilet and just grabbed a bunch of urine and water and submitted it as his drug sample.'' (Tr. 235.) Moreover, SA Grafenstein testified that an unidentified individual, who was waiting but did not intend to see a doctor, urinated into a Gatorade bottle carried by patient [M.I.] ''and then they both came back together and [M.I.] informed us all what had happened but also showed us the Gatorade bottle full of urine, which he kept in his pocket.'' (Tr. 238.) The individual who urinated in the Gatorade bottle said that he drove a patient ''down to the clinic * * * because the individual who was seeing the doctor told him that he would give him half of whatever he was prescribed for driving him down [t]here.'' (Tr. 239.) SA Grafenstein testified that this behavior indicated that ''the patients ran the clinic. * * * [I]f I could go in and urinate in the cup and * * * pass it off as somebody else's, you know, the patients were the ones that ran the show there.'' (Tr. 238.)

After [M.B.] left, SA Grafenstein asked the receptionist how much longer the wait would be. (Tr. 232.) She responded that the doctor on the premises was only seeing follow-up patients, but that in approximately one hour or one-and-one-half hours, another doctor would arrive.[72] (Tr. 232–33.)

SA Grafenstein returned to the waiting area. A ''female in the group stated that the doctor that was currently there did not have a valid DEA registration so that anyone that had received a script from this doctor would not get their prescriptions filled that day.'' (Tr. 234.) He overheard someone ''inquire[] to the female how strict the doctor was. To which she replied, not very. He also asked the female if the doctor checked for trackmarks, and she said he had not.''[73] (Tr. 235.) Although not dispositive, SA Grafenstein testified that he did not recall Respondent checking him for track marks. (Tr. 236. *But see* Tr. 34–35.)

Another individual in the waiting area ''mentioned that the new doctor that would be coming in has a valid DEA registration so that whoever was seen by that doctor would be able to get their prescriptions filled that day.'' (Tr. 236–37.) Respondent arrived at the clinic at approximately 4:30 or 5:00 p.m. (Tr. 246.)

SA Grafenstein further testified that he overheard [M.I.] state that two hours earlier ''he had gone home and did cocaine, not knowing that he'd have to take a drug test. And after he learned that he ingested bleach * * * to beat the drug test.''[74] (Tr. 237.) Respondent later issued a prescription to [M.I.][75] (Tr. 239–40.)

SA Grafenstein also related that ''[a]nother individual in the group stated that if you failed the drug test for marijuana, you could pay $50 to the drug test administrator and the administrator would make your hot, or your failed test, clean.'' (Tr. 237.)

SA Grafenstein was eventually called to have his vitals taken and submit a urine sample. (*See* Tr. 240.) Security did not watch as SA Grafenstein provided a urine sample. (Tr. 240.)

The foregoing evidence regarding patient conversations in the APM waiting area and the lack of supervision and fabrication of drug tests, although partially based upon hearsay, is internally consistent, contains indicia of reliability and is generally consistent with other evidence of record. The emerging image of APM on February 16, 2010, is that of a clinic in which patients collude with one another and with staff members to fabricate desirable urinalysis results and thereby obtain controlled substances outside the usual course of professional practice or for other than a legitimate medical purpose. Although not for the most part directly attributable to Respondent, this misconduct calls into question the legitimacy of APM as a whole.

Approximately six hours after SA Grafenstein arrived at APM, Respondent called SA Grafenstein into his office. (Tr. 241; 247; *see* Gov't Ex. 8 at 33.) SA Grafenstein sat approximately three feet from Respondent, on the other side of a desk. (Tr. 241.) Respondent asked SA Grafenstein's age and how he hurt himself. (Gov't Ex. 8 at 33.) SA Grafenstein responded ''[b]asically * * * kind of, sort of, maybe just from work stuff. So I ache in the upper and lower * * * .'' (Gov't Ex. 8 at 33.) Respondent inquired whether he was in a car accident or fell, to which SA Grafenstein responded ''[m]ore * * * like a lot of lifting, monotonous daily [stuff].'' (Gov't Ex. 8 at 34.) At hearing, SA Grafenstein testified that he informed Respondent that he was not in any pain but had ''mainly tightness, soreness and achiness

[71] SA Grafenstein later looked up the patient's name in the Florida driver's license database and identified the patient by photo. (Tr. 226.)

[72] SA Grafenstein testified that the initial doctor was Dr. [S.B.], who left when Respondent arrived. (Tr. 233.)

[73] SA Grafenstein testified that the term ''track marks'' refers to indications of extensive intravenous needle usage consistent with drug addiction. (Tr. 235–36.)

[74] SA Grafenstein believed [M.I.] actually ingested bleach. (Tr. 248.) At hearing, Respondent testified that ''if you were to swallow bleach, you would get a severe esophagitis—You would have to require an immediate endoscopy and you would be acutely ill.'' (Tr. 501–02.)

[75] SA Grafenstein did not actually see the prescription, but the patient said ''the doctor had hooked him up.'' (Tr. 249.)

[due] to a tight lower back, upper back and neck area.'' [76] (Tr. at 241.) Respondent marked in SA Grafenstein's record that his pain was a ten on a scale of one to ten (Gov't Ex. 18 at 18), and conceded at hearing that SA Grafenstein never gave him that number (Tr. 475).

Respondent told SA Grafenstein that ''the issue is that I can't tell you anything about your neck 'cause you don't have an MRI.'' (Gov't Ex. 8 at 34; *see* Tr. 241.) ''The one you have there tells me that you have some problems in your low back * * * It tells me nothing about your neck.'' (Gov't Ex. 8 at 35.) Respondent asked SA Grafenstein how bad the pain was with and without medicines, on a scale of one to ten. (Gov't Ex. 8 at 36.) At hearing, SA Grafenstein testified that ''I said that my tightness and soreness with medication was zero and without medication it was a [two].'' [77] (Tr. 242.) SA Grafenstein testified that Respondent wrote two or three in the patient chart. (Tr. 242; *see* Gov't Ex. 10 at 18. *See generally* Tr. 220.)

Upon inquiry from Respondent, SA Grafenstein stated that standing, bending or sitting made his pain worse; that he did not use drugs, alcohol or cigarettes; and that he had not had surgery and had no allergies or medical problems. (Gov't Ex. 8 at 36.)

At approximately 8:00 p.m., Respondent directed SA Grafenstein to sit on an examination table. (Tr. 242, 247.) Respondent told SA Grafenstein to raise his hands (*see* Gov't Ex. 8 at 37) and inhale deeply (Gov't Ex. 8 at 39) while Respondent listened with a stethoscope (Tr. 242). Respondent also asked SA Grafenstein to bend over and felt along SA Grafenstein's back and neck with his hand. (Tr. 242; Gov't Ex. 8 at 40.) He asked where the pain was and performed reflex tests. (Tr. 242–43.)

Respondent asked SA Grafenstein whether he was taking medication six times a day and whether ''that seems to work out good for you?'' (Gov't Ex. 8 at 42.) SA Grafenstein responded in the affirmative [78] and stated that he was also taking Xanax. (Gov't Ex. 8 at 42; Tr. 243.) Respondent inquired ''how much Xanax are you taking? 'Cause it didn't get put on there, but I'll, I'll get it for you.'' (Gov't Ex. 8 at 42.) SA Grafenstein responded that he was taking about sixty. *Id.*

Respondent issued SA Grafenstein prescriptions for 180 Roxicodone 30 mg tablets and 60 Xanax 2 mg tablets, reflecting the medications SA Grafenstein indicated on his patient forms and requested orally.[79] (Tr. 216, 243; Gov't Ex. 9; Gov't Ex. 10 at 3, 4.) Dr. Glener opined that of the files he reviewed associated with Respondent's patients, ''the most egregious is [SA Grafenstein], where [Respondent] prescribe[d] a potentially fatal combination of oxycodone and alprazolam [80] without any justification whatsoever.'' [81] (Gov't Ex. 22 at 2; *see* Tr. 329–30.)

In response, Respondent testified that he prescribed Xanax based on the patient's representation that he was taking the medication, despite being aware that the patient had tested negative for both oxycodone and alprazolam.[82] (Tr. 427–28, 476.) Respondent also testified that he performed an appropriate and complete history and physical examination on SA Grafenstein, made findings and developed a treatment objective, and that his treatment of SA Grafenstein with controlled substances was based on sound clinical grounds, to include an MRI report.[83] (Tr. 418, 433.) I reject Respondent's testimony in this regard as not credible and inconsistent with the weight of the evidence. Although Respondent may have been concerned that the patient would experience withdrawal symptoms without Xanax, Respondent conceded at hearing that he did not ask the patient when he had last taken the Schedule IV controlled substance. (*See* Tr. 476–77.) Moreover, although the existence of an MRI report evincing ''an abutment of the nerve * * * that can lead to pain * * * .'' (Tr. 419) suggests some medical basis for prescribing an opioid analgesic, Dr. Glener credibly testified that the combination of oxycodone and alprazolam was both ''egregious'' and ''potentially fatal.'' (Tr. 329; Gov't Ex. 22 at 2.) Upon consideration of all the evidence, to include the competing evaluations of Respondent's conduct by Respondent and by Dr. Glener, I find by substantial evidence that Respondent's prescriptions to SA Grafenstein were outside the usual course of professional practice or for other than a legitimate medical purpose, in violation of state and federal law. *See* 21 C.F.R. § 1306.04(a); Fla. Admin. Code Ann. r. 64B8–9.013(1)(b).

The record further reflects that although he knew the MRI report focused on the wrong area of SA Grafenstein's body (*see* Gov't Ex. 8 at 33; Tr. 241), Respondent did not order a new MRI, nor did he discuss a treatment plan or the risks and benefits of the medication he provided. (Tr. 244.) On cross-examination, SA Grafenstein conceded that he had received and signed a Consent Form, containing a discussion of risks and benefits. (Tr. 245; *see* Gov't Ex. 10 at 9–10; *see also* Tr. 429–30.) The Consent Form, however, reflects an empty space next to the line reading ''Dr. Rene Casanova is prescribing opioid medicine * * * for a diagnosis of:'',[84] (Gov't Ex. 10 at 9; Tr. 253) and SA Grafenstein testified that Respondent did not provide him with a diagnosis. (Tr. 253.) Dr. Glener opined that the Consent Form is incomplete because the diagnosis is not listed, but the box is checked, and because no alternative treatments were listed, but that box is checked as well. (Tr. 398; *see* Gov't Ex. 10 at 9.) In addition, the patient's signature is not witnessed. (Tr. 399.) The foregoing evidence is inconsistent with the Florida Standards, which provide that ''[t]he physician is required to keep accurate and complete records * * * .'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(f).

Dr. Glener further opined that ''[SA Grafenstein] stated his pain without medication was 2/10, a complaint of minimal pain, and a huge dosage of oxycodone was prescribed. Alprazolam 2 mg twice daily was then prescribed without documenting any anxiety. Prescription of other psychotropic medication or referral to a mental health professional was not considered.'' (Gov't Ex. 22 at 2; *see also* Tr. 333.) Respondent further conceded that he did not refer SA Grafenstein to a specialist.[85] (Tr. 476.) Respondent's conduct is inconsistent with Florida Administrative Code Rule 64B8–9.013(3)(e), which provides that ''[t]he physician should be willing to refer the patient as necessary for additional evaluation and treatment * * * .'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(e).

The record reflects additional irregularities in Respondent's treatment of SA Grafenstein. Consistent with his report, Dr. Glener testified at hearing that he found it interesting that SA Grafenstein stated that his pain was two out of ten, ''which is extremely mild pain'' and ''the very definition of tenderness.'' (Tr. 328–29; *see also* Tr. 393 (describing difference between pain and

[76] A transcript of the undercover recording reflects that SA Grafenstein described his pain as ''[a] lot of pain. My upper is bother me [sic], a little sore. My lower, nothing that's * * * like excruciating * * * .'' (Gov't Ex. 8 at 34.) The audio recording of the conversation is inconsistent with the transcript with regard to SA Grafenstein's reference to ''[a] lot of pain'', and is consistent with SA Grafenstein's testimony that he did not use the word pain. (Gov't Ex. 7, UC Audio Pt 2.002 at 19:51:43–19:52:00.

[77] In fact, the record of the undercover visit reflects that Respondent asked SA Grafenstein to ''[g]ive me a number'' to which SA Grafenstein responded ''Two.'' (Gov't Ex. 8 at 36.)

[78] Consistent with the transcript of the visit, SA Grafenstein completed a patient form indicating he was currently taking 180 oxycodone 30 mg tablets. (Gov't Ex. 10 at 3 & 4.)

[79] SA Grafenstein testified that following his meeting he checked out with the receptionist, who gave him prescriptions and scheduled a follow-up appointment for March 16, 2010. (Tr. 244.) There is no indication that SA Grafenstein kept the appointment.

[80] Regarding his comment as to the dangers of prescribing alprazolam 2 mg tablets with oxycodone 30 mg tablets six times daily, Dr. Glener remarked that ''[t]he potential for disaster is very high * * * .'' (Tr. 332.) He explained that ''most people would be rendered unconscious and very many of those people would die from using the medications as prescribed so they are almost certainly being diverted on that basis.'' (Tr. 330.) In Dr. Glener's opinion, a dosage of .25 or possibly .5 milligrams of alprazolam would be more appropriate because ''there is really little indication for the ongoing prescription of large doses of a short-acting benzodiazepine * * * . Most physicians will use a long-acting benzodiazepine if they even feel one is necessary.'' (*See* Tr. 330–31.)

[81] Dr. Glener further explained: ''Dr. Casanova makes no notation that the patient is experiencing anxiety in his Review of Systems, the only reason to prescribe this medication.'' (Gov't Ex. 22 at 2.)

[82] In mitigation, Respondent explained that alprazolam has a short half-life and can quickly vanish from a person's system, meaning that patients ''can potentially experience some withdrawal'' to include a risk of seizure. (Tr. 428.)

[83] For instance, he identified findings in the MRI report evincing ''an abutment of the nerve * * * that can lead to pain * * * .'' (Tr. 419.) He concluded that the patient was suffering from low-back pain and occasional neck pain. (Tr. 422–23.)

[84] The Consent Form also reflects an empty space next to the line reading ''[t]he other alternatives discussed include acupuncture, massage'' (Gov't Ex. 10 at 9), and Respondent did not discuss acupuncture, massage or any other alternative treatments with SA Grafenstein. (Tr. 253–54.)

[85] Respondent explained that he intended to ''make some decisions relative to consultations or referrals'' at a follow-up visit. (Tr. 476.) There was no follow-up visit.

tenderness).) Dr. Glener wrote that Respondent ''found lower lumbar tenderness on physical examination, also noting 'pain with palpation,' indicating that he does not understand that this is the definition of tenderness.'' (Gov't Ex. 22 at 1.) At hearing, Dr. Glener elaborated that ''I was just trying to show that even a medical student knows what that means and what kind of expertise could this doctor have if he doesn't even know something a first-year medical student would know.'' (Tr. 394–95.) He also wrote that Respondent ''[w]ould not evaluate [SA Grafenstein]'s neck because he had no MRI report, consistent with a common belief among 'pill mill' doctors that having pathology on an MRI report somehow justifies the prescription of controlled substances.'' [86] (Gov't Ex. 22 at 2.)

At hearing, Respondent asserted that SA Grafenstein's medical file contains a physical examination, history of drug abuse and dependence and diagnostic, therapeutic and laboratory results as required by the Florida Standards. (Tr. 423.) He argued that it is difficult to develop a treatment plan over the course of a single visit and instead, a treatment plan slowly progresses over time. (Tr. 425–26.) Although I accept Respondent's testimony that a treatment plan progresses over time, Respondent was still bound to document a treatment plan compliant with the Florida Standards [87] before issuing a prescription for controlled substances. *See Robert L. Dougherty, M.D.,* 76 Fed. Reg. 16,823, 16,832 n.11 (DEA 2011) (practitioner's standard of care refers to that generally recognized in medical community, rather than standard personal to practitioner).

Respondent also explained that he had inadvertently transposed numbers on SA Grafenstein's history and physical examination form, erroneously indicating that SA Grafenstein's pain while on medication was a ten and his pain without medication was a two or three, on a scale of one to ten. (*See* Tr. 474; *see also* Gov't Ex. 10 at 18.) Although apparently inadvertent, Respondent's inaccurate notation in SA Grafenstein's patient file is inconsistent with the Florida Standards. *See* Fla. Admin. Code Ann. r. 64B8–9.013(3)(f) (''[t]he physician is required to keep accurate and complete records * * * .''); *see also* Tr. 319 (expert testimony that ''it's incumbent upon [the physician] to document [the physician's] thought process * * * .'').

In summary, the record reveals numerous violations of standards and regulations concerning Respondent's prescribing of controlled substances in the context of SA Grafenstein's undercover visit to APM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Grafenstein lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Florida Administrative Code Rule 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 C.F.R. § 1306.04(a).

(b) SA Cortes February 16, 2010 Undercover Visit to APM

SA Cortes visited APM in an undercover capacity on February 16, 2010, and wore a functioning concealed audio recording device. (Tr. 257–58, 263.) He submitted new patient paperwork, provided a fictitious MRI report [88] and undercover Florida driver's license and picked up a business card for Simfa Rose pharmacy. (Tr. 272–73; *see* Tr. 268–69.) He intentionally left blank the section of the paperwork inquiring about current medications. (Tr. 265.) He also checked a box indicating that he was not in pain. (Tr. 266; *see* Gov't Ex. 14 at 3.) After paying for the visit, SA Cortes waited in the waiting area for approximately five-and-one-half hours.[89] (Tr. 265, 273.)

During his wait, a staff member named Jeremiah Flowers conducted triage procedures to include measuring blood pressure and weight and performing a urinalysis. (Tr. 273–74.) There was no supervision while SA Cortes provided a urine specimen. (Tr. 274.) Mr. Flowers evaluated the urine drug test in SA Cortes's presence, stating that the test was negative, meaning no opioids or controlled substances were detected. (Tr. 274–75.) SA Cortes's testimony regarding the absence of supervision during his urine drug screen is consistent with, and tends to corroborate, other evidence of record indicating that APM did not carefully supervise urine drug screens, among other deficiencies.[90]

After SA Cortes had waited more than five hours, Respondent called him into his office. (Tr. 273, 275.) Respondent directed him to sit across from him at a desk, approximately three feet away. (Tr. 275.) Respondent asked SA Cortes how old he was and how he hurt himself. (Gov't Ex. 12 at 2.) SA Cortes responded ''Uh * * * not really hurt, doc. Um * * * what I'm experiencing is * * * more and more stiffness * * * after each practice.'' (Gov't Ex. 12 at 2; Tr. 275–76.) Respondent asked where, and SA Cortes indicated his shoulders and lower waist. (Gov't Ex. 12 at 2.) Respondent asked how it happened, to which SA Cortes responded that he was studying martial arts and that ''lately, more and more, after each practice, it's getting * * * worse.'' (Gov't Ex. 12 at 2–3.)

Although there had not yet been any discussion of medication and SA Cortes did not indicate he was taking any medication on his Pain Assessment Form (Gov't Ex. 14 at 2), Respondent asked how long SA Cortes had been taking ''these medications'' and then asked ''Are you taking? You didn't write anything.'' (Gov't Ex. 12 at 3.) SA Cortes asked if his responses were confidential, to which Respondent answered in the affirmative. (Gov't Ex. 12 at 3.) SA Cortes explained that he had been taking Tylenol and his girlfriend's hydrocodone left over from her gallstone surgery.[91] (Gov't Ex. 12 at 3–4; Tr. 276.) Respondent asked how the medication worked for him and how many he was taking per day. (Gov't Ex. 12 at 4.) SA Cortes responded in the affirmative and indicated ''only about one (1) or two (2) a day.'' (Gov't Ex. 12 at 4.) Respondent attempted to identify the strength of the dosage, and SA Cortes identified the medication as a white oval tablet. (Gov't Ex. 12 at 5; Tr. 277.) Respondent asked if he experienced any side effects and SA Cortes said he felt woozy for a couple of days but the wooziness wore off. (Gov't Ex. 12 at 5.)

Contrary to SA Cortes's statements to Respondent that he had been taking his girlfriend's hydrocodone, SA Cortes's urine drug screen tested negative for that controlled substance. (*See* Tr. 482; *see also* Gov't Ex. 14 at 1.) Moreover, Dr. Glener testified that ''when someone admits to felonious behavior in my office, that certainly would prompt a follow-up.'' (Tr. 396.) By contrast, Respondent offered that he did not ask SA Cortes when he had last taken his girlfriend's hydrocodone because ''based on the information from the drug screen, given the half-life of the medicine and so forth, you can sort of backtrack that information.'' [92] (*See* Tr. 482.) Nor did he inquire whether SA Cortes had obtained a prescription for hydrocodone from another doctor. (Tr. 482.) Respondent testified that the information SA Cortes gave him was privileged [93] and that

[86] Dr. Glener explained that ''it's very prevalent * * * that physicians who are engaged in this sort of practice demand an MRI in order to use that as what I like to call the golden ticket to prescribe opioid analgesics. * * * An MRI is nothing magical. It's simply a diagnostic tool. Finding pathology on an MRI does not entitle any practitioner to prescribe a controlled substance. You need to connect the dots.'' (Tr. 336; *see also* Tr. 364–66, 373–74.)

[87] *See* Fla. Admin. Code Ann. r. 64B8–9.013(3)(b) (''The written treatment plan should state objectives that will be used to determine treatment success * * * '' as well as other elements).

[88] SA Cortes testified that he didn't know anything specific about the MRI report he provided, other than that it listed his undercover name and birth date and that it contained information about the spine or back area. (Tr. 281–82.)

[89] SA Cortes testified that he spent approximately eight-and-one-half hours at APM on February 16, 2010. (Tr. 273.)

[90] SA Cortes also testified that he overheard a conversation between Mr. Flowers and an unknown individual discussing different methods to inject heroin. (Tr. 275.)

[91] SA Cortes acknowledged on cross-examination that his statement to Respondent that he was taking opioids was false and was part of the undercover operation. (Tr. 283.)

[92] At the interview, SA Cortes remarked that the hydrocodone prescription had run out without being renewed (Gov't Ex. 12 at 4), but Respondent did not address this point at hearing.

[93] Consistent with his testimony at hearing, Respondent argues that SA Cortes's statement that he was using his girlfriend's hydrocodone was privileged. (Resp't Br. 18.) But ''privileges can be waived if the parties affirmatively do something to destroy the privilege * * * .'' *Harley v. Health Center of Coconut Creek, Inc.,* 469 F. Supp. 2d 1212, 1212 (S.D. Fla. 2006). Therefore, assuming, *arguendo,* that SA Cortes held a privilege in the contents of his communications with Respondent, SA Cortes waived that privilege by testifying at hearing. *E.g., Matter of Certain Complaints Under Investig. by an Investig. Cmtee. of the Judicial Council of the Eleventh Circuit,* 783 F.2d 1488, 1523 n.32 (11th Cir. 1986) (''the holder of a privilege can also waive it by permitting a breach of the privilege in his presence''), *superseded by statute on other grounds as stated in In re McBryde,* 120 F.3d 519 (5th Cir. 1997). More importantly, Respondent failed to ''refer the patient as necessary for additional evaluation and treatment'' or give

because SA Cortes indicated his girlfriend's hydrocodone was ''providing some sort of relief * * * my thought process was to bring him into a plan under physician supervision to provide him appropriate treatment for his medical ailments.'' (Tr. 435.) Having carefully considered all the evidence, I find that Respondent's reaction to SA Cortes's confessed diversion of controlled substances and his failure to follow up in the face of contradictory information were inconsistent with the Florida Standards, which state that ''[p]hysicians should be diligent in preventing the diversion of drugs for illegitimate purposes.'' Fla. Admin. Code Ann. r. 64B8–9.013(1)(d).

Respondent asked SA Cortes how bad his pain was with and without medication, on a scale from one to ten. (Gov't Ex. 12 at 5.) SA Cortes replied that the pain was three or four while on medication. (Gov't Ex. 12 at 6.)

CASANOVA: With the medicines?
S/A: Right.
CASANOVA: And without?
S/A: And without * * * um * * * worse than that. I mean, I [unintelligible]
CASANOVA: Eight (8) or a nine (9)?
S/A: Yeah * * * eight (8) or * * *

(Gov't Ex. 12 at 6; Tr. 277–78.) Respondent asked whether SA Cortes's pain radiated, to which SA Cortes replied in the negative. (Tr. 279.) Respondent asked SA Cortes where he worked, and SA Cortes responded that he worked the midnight shift at a warehouse, loading trucks. (Gov't Ex. 12 at 6.) He stated that lifting made his discomfort worse. (Gov't Ex. 12 at 7.)

Respondent asked whether SA Cortes smoked, used drugs or alcohol or had any surgery, allergies or medical problems, to which SA Cortes replied in the negative, indicating only that he was allergic to aspirin. (Gov't Ex. 12 at 7.) Respondent directed SA Cortes to sit on an examination table and to inhale while Respondent listened to his respiration with a stethoscope and tested his reflexes. (Tr. 278.) Respondent inquired again whether SA Cortes was taking hydrocodone. (Gov't Ex. 12 at 8; Tr. 278.) SA Cortes responded in the affirmative and that it wasn't prescribed to him, and Respondent stated ''I understand.'' (Gov't Ex. 12 at 9; *see* Tr. 278.) Dr. Glener testified that in Respondent's interaction with SA Cortes ''there really was no significant physical examination pertaining to the appropriate organ systems * * * .'' (Tr. 327.) Respondent testified to the contrary (*see* Tr. 434), but I find the objective evidence of record supports Dr. Glener's conclusion and also find that Respondent's conduct was contrary to Florida Administrative Code Rule 64B8–9.013(3)(f)(1), which provides that a ''physician is required to keep accurate and complete records to include, but not be limited to * * * [t]he medical history and physical examination * * *.'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(f)(1).

Despite SA Cortes's previous indication that he had been taking only one or two hydrocodone pills per day (Gov't Ex. 12 at 4; Tr. 279), Respondent said:

CASANOVA: You said you were taking about three (3) or four (4) a day?
S/A: Yes. [PAUSE: 00:09:02–00:09:31]
CASANOVA: Correct? * * * I'm going to give you four (4) * * * a day. Alright?
S/A: Okay.
CASANOVA: Alright?
S/A: Hopefully that works.

(Gov't Ex. 12 at 9.) Respondent explained that SA Cortes was to take one tablet four times per day, and that ''I gave you, uh, the higher dose: the seven point five (7.5) milligrams.'' (Gov't Ex. 12 at 10; Tr. 279.) Respondent issued SA Cortes a prescription for 120 hydrocodone 7.5 mg tablets on February 16, 2010. (Gov't Ex. 13; Tr. 277, 288.)

At hearing, Respondent conceded that he did not discuss the risks and benefits of the medication because ''[t]he information was provided in the documentation that is here that a patient checked off and signed off.'' [94] (Tr. 483.) But SA Cortes's Consent Form reflects an empty space next to the line reading ''Dr. Rene Casanova is prescribing opioid medicine * * * for a diagnosis of:'' (Gov't Ex. 14 at 8; Tr. 267.) In addition, Respondent did not discuss a diagnosis or treatment plan with SA Cortes, nor did he document a treatment plan in the patient file.[95] (Tr. 279–80, 486–87.) Moreover, the Consent Form reflects an empty space next to the line reading ''[t]he other alternatives discussed include acupuncture, massage [and]:'' (Gov't Ex. 14 at 8), and Respondent failed to discuss acupuncture, massage or any other alternative treatments with SA Cortes. (*See generally* Gov't Ex. 12.) As Dr. Glener observed, the Consent Form in SA Cortes's patient file is incomplete because the diagnosis is not listed, but the box is checked, and because no alternative treatments were listed, but that box is checked. (Tr. 398; *see* Gov't Ex. 14 at 8.)

In light of the foregoing, I find that Respondent failed to comply with the Florida Standards requiring that physicians maintain accurate and complete records, *see* Fla. Admin. Code Ann. r. 64B8–9.013(3)(f) (''The physician is required to keep accurate and complete records * * * .''), discuss the risks and benefits of the use of controlled substances, *see* Fla. Admin. Code Ann. r. 64B8–9.013(3)(c) (''The physician should discuss the risks and benefits of the use of controlled substances with the patient * * * .'') and document a written treatment plan,[96] see Fla. Admin. Code Ann. r. 64B8–9.013(3)(f).

In addition, Dr. Glener testified that Respondent's prescription of hydrocodone to SA Cortes was ''entirely inappropriate'' because ''[o]nce the patient emphasized that [he was] having stiffness and not pain, there's no indication for treatment with an opioid analgesic.'' (Tr. 327.) Dr. Glener elaborated that opioid analgesics are indicated for pain, and that the patient's comments suggested the existence of a muscular problem for which referral to a physical therapist would be appropriate. (Tr. 327.) Respondent conceded that he did not refer SA Cortes to a specialist,[97] (Tr. 476) notwithstanding the Florida standard stating that ''[t]he physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives.'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(e).

In summary, the record reveals numerous violations of standards and regulations concerning Respondent's prescribing of controlled substances in the context of SA Cortes's undercover visit to APM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Cortes lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Florida Administrative Code Rule 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 C.F.R. § 1306.04(a).

(c) SA Saenz March 10, 2010 Undercover Visit to CCHM

The transcript of SA Saenz's March 10, 2010 undercover visit to CCHM reflects that when Respondent met with SA Saenz, he first asked her age and how she hurt herself. (Gov't Ex. 16 at 4.) She stated she was thirty-four years old and that she thought she injured herself by lifting children at a daycare center where she worked. (*See* Gov't Ex. 16 at 4; Gov't Ex. 18 at 1.) Respondent stated that he assumed SA Saenz had lower back pain, to which she responded ''Uh-um, sometimes * * * about a week'' and indicated that she had hurt herself one week earlier. (Gov't Ex. 16 at 5, 8–9.)

SA Saenz's patient file includes an MRI report dated March 8, 2010.[98] (Gov't Ex. 18 at 19–20.) Respondent asked if she obtained the MRI two days ago, to which she responded in the affirmative. (Gov't Ex. 16 at

''[s]pecial attention * * * to those pain patients who are at risk for misusing their medications and those who * * * pose a risk for medication misuse or diversion.'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(e).

[94] Similarly, on cross-examination, SA Cortes acknowledged that the Consent Form discusses risks and benefits of taking opioids. (Tr. 284.)

[95] Respondent conceded that the Florida Standards required a written treatment plan. (Tr. 486–87.) *See also* Fla. Admin. Code Ann. r. 64B8–9.013(3)(f).

[96] I accordingly reject Respondent's contention at hearing that his treatment of SA Cortes was, on the whole, proper. Respondent's assertion in this regard consisted of a number of claims, some demonstrably false. For instance, Respondent asserted that he formulated a treatment objective and on that basis treated the patient (Tr. 434); that the medical file contains the complete required documentation for medical records under the Florida regulations, to include medical history, diagnostic tests, evaluation, treatment objective and discussion of risks and benefits, albeit not orally (Tr. 439); that the treatment plan ''is formulated over time with numerous visits to gather more information, get all the appropriate documentation and so forth and review all the data'' (Tr. 439); and that his prescription of controlled substances to SA Cortes was based on accepted scientific knowledge of the treatment of pain and based on sound clinical grounds. (Tr. 441.)

[97] Respondent explained that he intended to ''make some decisions relative to consultations or referrals'' at a follow-up visit. (Tr. 476.) There was no follow-up visit.

[98] Respondent had not ordered the MRI; SA Saenz brought it with her on her own accord. (*See* Tr. 443.)

5.) At hearing, Respondent testified that the MRI report was consistent with her complaints of pain. (Tr. 444.)

At the patient interview, Respondent asked SA Saenz ''[a]re you taking any medicines for this? I assume not, 'cause it's just a week. Right?'' (Gov't Ex. 16 at 5.) SA Saenz responded that she was taking ''[i]buprofen and stuff.'' (Gov't Ex. 16 at 5.) Respondent asked if she was taking anything else, to which she responded ''Uh * * * what did I had [sic] * * * Tones, Dones'' (Gov't Ex. 16 at 7), which Respondent identified at hearing as slang for ''[o]xycodone, some kind of a narcotic pain medication.'' (Tr. 445–46.) Consistent with this interpretation, patient paperwork that SA Saenz completed indicates she was taking Roxicodone 40 mg tablets eight times per day, oxycodone 15 mg tablets three times per day and 2 mg Xanax tablets two times per day, a not inconsequential quantity of controlled substances. (*See* Gov't Ex. 18 at 8.) An examination note in her patient file also reflects the notion ''dones.'' (Gov't Ex. 18 at 1.) Her urine drug screen, however, was negative for oxycodone. (Gov't Ex. 18 at 18; Tr. 446.) And, notably, SA Saenz told Respondent that she had not seen any doctor for medicines (Gov't Ex. 16 at 7; *see also* Gov't Ex. 18 at 1), raising the questions of how she obtained them and whether she was using them, and suggesting that she had participated in the diversion or abuse of controlled substances.[99]

If Respondent had any concerns about SA Saenz's apparent diversion or abuse of controlled substances, or irregularities in her statements and medical file, there is no evidence that he voiced them. Indeed, Respondent testified at hearing that he did not ask SA Saenz how she had obtained oxycodone and Xanax. (*See* Tr. 495.) This omission reflects a degree of willful blindness by Respondent to issues of diversion, especially given that he proceeded to prescribe controlled substances to SA Saenz. (Gov't Ex. 17.) Moreover, under the Florida Standards, ''[t]he physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. *Special attention should be given to those pain patients who are at risk for misusing their medications and [who] * * * pose a risk for medication misuse or diversion.''* Fla. Admin. Code Ann. r. 64B8–9.013(3)(e) (emphasis supplied). In light of her negative drug screen, her use of slang to refer to oxycodone and her statement that she had not seen a doctor for the controlled substances she admitted taking, SA Saenz's ''risk for medication misuse or diversion'' was patent. But at hearing, Respondent conceded that he did not refer SA Saenz to a specialist (Tr. 476), and there is no indication that Respondent otherwise displayed ''special attention'' to her heightened risk of diversion.[100] Respondent's conduct in this regard is inconsistent with Florida Administrative Code Rule 64B8–9.013(3)(e).

In partial mitigation, SA Saenz did confirm to Respondent that the medication was helping with her pain. (Gov't Ex. 16 at 7.) Moreover, Respondent explained at hearing that because SA Saenz's urine drug screen was negative, he was concerned she might suffer from withdrawal symptoms. (Tr. 446.) But Respondent's statement in this regard is not credible, as neither the transcript of Respondent's interview with SA Saenz nor handwritten notes in the patient file contain any reference to withdrawal,[101] and physicians are required to document their thought processes in the medical record. *E.g.,* Tr. 319. *See generally* Fla. Admin. Code Ann. r. 64B8–9.013(3)(f) (''The physician is required to keep accurate and complete records * * * .''). I do credit, however, Respondent's statement that ''this was somewhat confusing that she did state just on tomes and domes and didn't state anything about an anxiolytic with this piece of information and her drug screen was negative.'' (Tr. 446.) I also find that Respondent's conduct is inconsistent with a physician's duty to ''be diligent in preventing the diversion of drugs for illegitimate purposes.'' Fla. Admin. Code Ann. r. 64B8–9.013(1)(d). I moreover reject Respondent's argument that he ''had no reasons to believe that the undercover agents were lying or otherwise falsifying information to illegally obtain medication.'' (Resp't Br. 28.) To the contrary, by prescribing controlled substances (Gov't Ex. 17) in the face of a drug screen revealing negative results for the very controlled substances the patient claimed she was taking without a prescription, Respondent failed to give ''[s]pecial attention * * * to those pain patients who are at risk for misusing their medications and * * * [who] pose a risk for medication misuse or diversion * * * .'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(e).

The record reflects that during the patient meeting, Respondent asked SA Saenz to describe her pain. (Gov't Ex. 16 at 5.) She responded that the pain was dull and throbbing, but was not constant, and that it bothered her mostly in the morning. (Gov't Ex. 16 at 5–6.) At hearing, Respondent testified that SA Saenz had circled a number of adjectives to describe her pain on her Pain Assessment Form (Tr. 444), to include words such as ''sharp,'' ''aching,'' ''tender,'' ''shooting,'' ''numb,'' ''throbbing'' and ''unbearable'' (Gov't Ex. 18 at 8).

Respondent also asked SA Saenz whether the pain interfered with her ''daily activities, your ability to function at work.'' (Gov't Ex. 16 at 6.) SA Saenz responded in the negative, simply stating ''No.'' (Gov't Ex. 16 at 6.)

CASANOVA: It doesn't?
UC: I suck it up.
CASANOVA: So then, but that's, those are two (2) different answers.
UC: Oh.
CASANOVA: Yes or no?
UC: Uh-um, no.
CASANOVA: Does it interfere with your activities?
UC: No.
CASANOVA: Does it interfere would mean * * * function or your ability to work.
UC: Not enough.

(Gov't Ex. 16 at 6.) This interchange reveals Respondent's persistence in inquiring whether SA Saenz's pain interfered with her ability to work, repeatedly pressing her even after she indicated that the pain did not interfere with her lifestyle. At hearing, Respondent denied that his treatment objective was to get SA Saenz back to work and noted that SA Saenz presented as ''stoic'' with respect to her pain from an acute injury. (Tr. 443, 447.) A note in SA Saenz's patient file contains circles around the word ''no'' associated with questions whether the pain interferes with daily activities and whether the patient needs medication to function or work. (Gov't Ex. 18 at 1.)

When Respondent inquired into the intensity of SA Saenz's pain (Gov't Ex. 16 at 7), she indicated that when she took Motrin the pain was about a three on a scale from one to ten and without Motrin her pain was about a five or a six. (Gov't Ex. 16 at 7; *see also* Gov't Ex. 18 at 1.) Respondent inquired whether SA Saenz had any surgeries or allergies or had gotten any medicines from other doctors, to which SA Saenz responded in the negative. (Gov't Ex. 16 at 7.) Respondent asked if she used drugs or alcohol, to which she replied that she drank socially on occasion. (Gov't Ex. 16 at 7–8.) He asked about her parents' health, and she responded that her parents both had high blood pressure and her father had high cholesterol. (Gov't Ex. 16 at 8.)

In addition, upon inquiry by Respondent, SA Saenz stated that she did not have any other medical problems. (Gov't Ex. 16 at 8.) SA Saenz's statement in this regard contradicted notations she made on her medical history indicating she suffered from insomnia and depression. (Gov't Ex. 18 at 6.) Respondent made no attempt to clarify this disparity, and the record reveals no evidence that he was even aware of it. The Florida Standards recognize that ''[t]he management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(e). Respondent's failure to notice the disparity between SA Saenz's written and oral statements, let alone perform ''extra care, monitoring and documentation,'' is facially inconsistent with the Florida Standards.

Respondent next conducted a physical examination of SA Saenz, asking her to uncross her legs, take a deep breath, bend forward and indicate where she had pain. (Gov't Ex. 16 at 9.) She indicated pain on her left side and sensitivity in her neck. (Gov't Ex. 16 at 9.) Respondent demonstrated a

[99] In an additional inconsistency, a medical history form completed by SA Saenz indicated she was not currently taking any medication. (Gov't Ex. 18 at 7.)

[100] Respondent explained that he intended to ''make some decisions relative to consultations or referrals'' at a follow-up visit. (Tr. 476.) There was no follow-up visit.

[101] Gov't Ex. 18. Respondent similarly suggested at hearing that he prescribed Xanax to SA Grafenstein out of a concern that SA Grafenstein would experience withdrawal symptoms without such a prescription. (Tr. 476–77.) Respondent conceded, however, that he never asked SA Grafenstein when he had last taken Xanax. (Tr. 477.) In any event, Respondent did not adequately address the heightened risk of diversion in either situation.

stretching exercise and recommended an Icy Hot patch. (Gov't Ex. 16 at 10.) Respondent stated he would prescribe high dose Motrin 800 mg, an anti-inflammatory ''and then I'm gonna write you for some narcotic pain medicine.'' (Gov't Ex. 16 at 11.) Respondent prescribed 90 Motrin 800 mg tablets, 90 Vicodin oral 5 mg—500 mg tablets and one pack containing twenty-one Medrol 4 mg tablets. (Gov't Ex. 17.) At hearing, Respondent explained that he prescribed a steroid to ''balance[] the effects of the medications.'' (Tr. 446.)

The record reflects that Respondent documented in the patient file conversations that did not occur. In particular, SA Saenz's patient file includes a document entitled ''Plan'' with handwritten check marks through boxes corresponding to the following text:

- Discussed anti-inflammatory diet, handout given to patient
- Patient has been counseled on risks/benefits of medications above; Pt. Will take exactly as prescribed
- Fish Oil/Omega-3 recommended at 3–6 grams per day
- Glucosamine + Chondroitin Sulfate recommended
- Strict avoidance of alcohol has been discussed at length
- Recommended avoidance of soda
- Goal is to wean off all medications has been explained to patient

(Gov't Ex. 18 at 4.) But the transcript of SA Saenz's undercover visit with Respondent contains no record of a discussion of an anti-inflammatory diet, the risks and benefits of medications, fish oil, Omega-3 or chondroitin sulfate. (*See* Gov't Ex. 16.) And as Respondent conceded on cross-examination, he did not have a conversation with SA Saenz regarding risk and benefits of the medications he gave her, and the portions of her Consent Form indicating a diagnosis and alternative treatment options are blank. (Tr. 496; Gov't Ex. 18 at 15.) This conduct is inconsistent with Florida Standards. *See* Fla. Admin. Code Ann. r. 64B8–9.013(3)(c) (''The physician should discuss the risks and benefits of the use of controlled substances with the patient.* * *'')

Moreover, the notation in the chart that ''[s]trict avoidance of alcohol has been discussed at length'' is patently false, given that Respondent merely asked whether SA Saenz drank, and when she answered in the affirmative, he asked whether she drank socially. (Gov't Ex. 16 at 7–8.) There is no suggestion in the record that Respondent counseled her ''at length'' to ''strictly'' avoid alcohol. Finally, there is no support in the record for the assertion that Respondent recommended that SA Saenz avoid soda or that he counseled her that a goal of treatment included weaning her off all medications. (Tr. 372–73.) By substantial evidence, I find that Respondent failed to keep accurate medical records in violation of Florida Administrative Code Rule 64B8–9.013(3)(f) (''The physician is required to keep accurate and complete records. * * *'') Moreover, in light of Dr. Glener's critique of Respondent for failing to inquire whether the patient had a substance abuse history or history of addiction (Tr. 372–73), a critique which is fully supported by the record, I find Respondent's conduct inconsistent with Florida Administrative Code Rule 64B8–9.013(3)(e), which states that a physician should ''refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives.'' Fla. Admin. Code Ann. r. 648–9.013(3)(e).

After Respondent had already voiced his decision to prescribe controlled substances, he asked SA Saenz whether she had ever taken narcotics before, to which she responded in the negative. (Gov't Ex. 16 at 13.) That Respondent's inquiry into SA Saenz's history with narcotics occurred only after he had already decided to prescribe controlled substances is striking. Additionally, SA Saenz's statement that she had never before taken narcotics is flatly contradicted by her notations in her medical file and her statements to Respondent that she was presently taking oxycodone. (Gov't Ex. 16 at 7; *see* Gov't Ex. 18 at 8.)

Near the end of the meeting, Respondent stated: ''I, let me . . . let me ask you a question, you seem like a smart young lady. Why, for this kind of thing, you go to a pain management clinic? Why not go see a doctor?'' (Gov't Ex. 16 at 13.) She replied that she didn't have a doctor, and Respondent suggested she visit Respondent's Urgent Care Center on Federal Highway. (Gov't Ex. 16 at 13–14.) He explained that seeing him at the CCHM pain clinic would cost $400 or more, but she could see him for free and possibly get referred to an orthopedist or physical therapist if she filed for worker's compensation and saw him at his Urgent Care Center.[102] (*See* Gov't Ex. 16 at 15; *see also id.* at 11–12.)

Dr. Glener testified that Respondent's treatment of SA Saenz ''deviated from the standard of care and prescription of controlled substances were [sic] inappropriate.'' (Tr. 333.) Based on Respondent's comment ''Why not go see a doctor?'' (Gov't Ex. 16 at 13), Dr. Glener opined that Respondent ''admits that he is functioning other than as a doctor * * *'' while at CCHM. (Gov't Ex. 22 at 2; Tr. 334.)

Respondent testified at hearing that SA Saenz's patient file contained all the items required by Section 3(f) of the Florida Standards. (Tr. 447.) But in light of Respondent's concession on cross-examination that he did not document a treatment plan or treatment objectives in SA Saenz's medical record (Tr. 490–92), the fact that the ''History and Physical Examination'' form describing objects of treatment and the portions of her Consent Form describing the diagnosis and alternative treatments are completely blank (Gov't Ex. 18 at 5, 15) and the lack of a history of substance abuse or addiction as noted above, I reject this testimony as not credible. Moreover, Respondent's admission that ''[t]here is no specific treatment plan . * * *'' (Tr. 492; *see also* Tr. 493) is inconsistent. with the Florida Standards. *See, e.g.,* Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (describing parameters of ''appropriate documentation''); Fla. Admin. Code Ann. r. 64B8–9.013(3)(b) (contemplating a ''written treatment plan''). On the weight of the record evincing numerous violations of laws and regulations relating to Respondent's prescription of controlled substances to SA Saenz, I afford little weight to Respondent's assertion that his treatment was based on accepted scientific knowledge of the treatment of pain and was supported by sound clinical grounds. (Tr. 447.)

In summary, the record reveals numerous violations of standards and regulations concerning Respondent's prescribing of controlled substances in the context of SA Saenz's undercover visit to CCHM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Saenz lacked a ''legitimate medical purpose . . . that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Florida Administrative Code Rule 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 C.F.R. § 1306.04(a).

(d) Evaluation of Expert Testimony

As discussed above, the evidence at hearing included opinions from Dr. Glener and Respondent regarding Respondent's prescribing practices. Expert testimony regarding a physician's prescribing practices is an important but not indispensable part of evaluating whether a practitioner is acting for a ''legitimate medical purpose'' in the ''usual course of his professional practice.'' [103] The Agency has previously held that ''[w]here, for example, the Government produces evidence of undercover visits showing that a physician knowingly engaged in outright drug deals, expert testimony adds little to the proof necessary to establish a violation of federal law.'' *Cynthia M. Cadet, M.D.,* 76 Fed. Reg. 19,450, 19,450 (DEA 2011).

As for the opinion of a treating physician, in the context of a DEA administrative hearing a treating physician's opinion should not automatically be given greater weight than the opinion of a non-examining physician. ''Despite a certain degree of lingering confusion among the courts of appeals, it has become overwhelmingly evident that the testimony of the 'treating physician' receives no additional weight.'' *Eastover Mining Co. v. Williams,* 338 F.3d 501, 509 (6th Cir. 2003). Unlike a Social Security benefit determination that is governed by a regulation giving deference to a treating physician, no such regulation pertains to a DEA administrative hearing.[104] Accordingly, I have not given Respondent's testimony greater weight simply because of his status as a treating physician, particularly given the short duration of his treatment of each undercover patient.[105]

[102] Respondent also asked SA Saenz to call him in a week to assess how she was feeling. (Gov't Ex. 16 at 11.) He offered to write her a note for work ''[b]ecause you shouldn't be lifting kids at work'' or do certain kinds of bending. (Gov't Ex. 16 at 11, 16.)

[103] 21 C.F.R. § 1306.04(a).

[104] *See* 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

[105] I accordingly reject Respondent's argument that ''Dr. Casanova's testimony as to his compliance with Rule 64B8–9.013, Florida Administrative Code must be given great weight'' (Resp't Br. 25) and instead give Respondent's testimony weight where credible.

As noted above, based on his review of the undercover patient files, Dr. Glener found that ''[i]n all of the cases, the doctor prescribed controlled substances outside the usual course of professional practice or for other than a legitimate medical purpose.'' (Tr. 338–39.) After an extensive review of the record, I find Dr. Glener's opinion to be supported and corroborated by objective evidence. Therefore, although as noted above the record supports a finding that Dr. Glener demonstrated some bias against Respondent, Dr. Glener's conclusions as to Respondent's conduct discussed in this Recommended Decision are fully supported by the record.[106] Moreover, the discussions above relating to each undercover patient visit reveal multiple instances in which expert testimony is not required to make findings under 21 U.S.C. § 823(f) because the conduct is plainly and facially inconsistent with straightforward provisions of law. *See generally Cadet,* 76 Fed. Reg. at 19,450. I therefore reject as not credible and unfounded Respondent's testimony and argument that he complied with Florida Administrative Code Rule 64B8–9.013. (*E.g.,* Resp't Br. 24–25.) As detailed above, the record reveals numerous instances in which Respondent failed to maintain complete and accurate records or document a treatment plan consistent with the Florida Administrative Code, among other deficiencies.

(e) Summary of Undercover Patients

After reviewing the entire record, I find that substantial evidence that is both objective and otherwise reliable supports Dr. Glener's conclusion that Respondent's treatment of three undercover agents posing as patients ''deviated from the standard of care, was not appropriate in all cases and the focus of treatment appeared to be the prescription of controlled substances.'' (Tr. 324–25.) I further find by substantial evidence that Respondent issued three sets of controlled substance prescriptions for other than a legitimate medical purpose and outside the usual course of professional practice, in violation of federal and state law.[107] This finding weighs heavily in favor of a finding under Factors Two and Four of 21 U.S.C. § 823(f) that Respondent's continued registration would be inconsistent with the public interest.

Respondent's argument in mitigation that he ''complied with many aspects of the law'' (Resp't Br. 25; *see also id.* at 26) is misplaced; in DEA registration proceedings compliance with one provision of law does not generally excuse the failure to comply with another. *Cf. Michael J. Aruta, M.D.,* 76 Fed. Reg. 19,420, 19,420 n.3 (DEA 2011) (holding that even ''evidence that a practitioner has treated thousands of patients'' in circumstances that do not constitute diversion ''does not negate a prima facie showing that the practitioner has committed acts inconsistent with the public interest'' (citing *Jayam Krishna-Iyer,* 74 Fed. Reg. 459, 463 (DEA 2009))); *Medicine Shoppe-Jonesborough,* 73 Fed. Reg. 364, 386 & n.56 (DEA 2008) (noting that pharmacy ''had 17,000 patients,'' but that ''[n]o amount of legitimate dispensing[] can render * * * flagrant violations 'consistent with the public interest'''), *aff'd, Medicine Shoppe—Jonesborough v. DEA,* 300 Fed. Appx. 409 (6th Cir. 2008). ''While such evidence may be [entitled to] some weight in assessing whether a practitioner has credibly shown that [he] has reformed his practices,'' it is entitled to no weight where a practitioner fails to acknowledge his wrongdoing.[108] *Krishna-Iyer,* 74 Fed. Reg. at 463. ''Put another way, even where the Government proves only a few instances of illegal prescribing in the 'entire corpus' of a practitioner's experience, the Government has nonetheless made out a prima facie case and thus shifted the burden to the registrant to show why he should be entrusted with a new registration.'' *Id.* at 464.

(f) Respondent's Prescribing to Kentucky Patients at CCHM

The testimony adduced at hearing reflects that three Kentucky patients visited Respondent at CCHM. On April 6, 2010, Respondent prescribed 90 Percocet 10 mg tablets and 220 Roxicodone 30 mg tablets to patient [C.C.] of Wallingford, Kentucky. (Tr. 90, 95; Gov't Ex. 20 at 1–2.) Neither party offered additional evidence relating to patient [C.C.], and there is no basis to conclude that Respondent's prescription to [C.C.] was improper.

The record further reflects that on March 31, 2010, Respondent issued identical prescriptions of 100 Roxicodone 15 mg tablets and 210 Roxicodone 30 mg tablets to patient [C.G], age fifty, of Essie, Kentucky, and patient [R.C.], age forty-eight, of Helton, Kentucky. (Tr. 91–92, 96–97; Gov't Ex. 20 at 3, 5.)

On the same day, at Wood's Pharmacy in Margate, Florida (Tr. 90), [C.G.] filled [C.G.]'s prescriptions at 4:07 p.m. and [R.C.] filled [R.C.]'s prescriptions at 4:01 p.m. and 4:11 p.m. (Gov't Ex. 20 at 4 & 6.)

The record therefore reflects that Respondent issued identical prescriptions on the same day to two Kentucky patients of similar age; that the prescriptions were filled at the same Florida pharmacy within a single ten-minute window; and that the cities of Essie, Kentucky and Helton, Kentucky are located close to each other but approximately 900 to 1000 miles and fifteen to sixteen hours away from Respondent's office in Deerfield Beach, Florida (Tr. 98–99).

Respondent argues that ''the Government's Exhibit 20 and [GS] Langston's testimony do not provide any indication whatsoever that Dr. Casanova improperly wrote prescriptions or otherwise violated any law.''[109] (Resp't Br. 29–30.) Although these circumstances may be suspicious (*see* Tr. 98–99), there is no indication that the prescriptions were other than for a legitimate medical purpose or pursuant to the usual course of professional practice, because the patient files are not in evidence and were not discussed at hearing. (*See* Tr. 101–03.) Accordingly, I do not find the evidence of record with regard to the three Kentucky patients sufficient to constitute substantial evidence that Respondent's prescriptions and conduct violated any applicable law or regulation.

(g) Respondent's Positive Experience in Dispensing Controlled Substances

Respondent offered testimony and pointed to evidence of his past positive experience in dispensing controlled substances, including his experience at MEC. Additionally, DI Stockmann testified that MEC is not a pill mill, and that aside from the absence of a biennial inventory on February 23, 2011, MEC appeared to be within the scope of a normal medical practice. (*See* Tr. 118, 127–28, 137.) Additionally, Respondent offered testimony that he gained experience dealing with acute and chronic pain patients and treating them with opioids, and familiarized himself with the Florida Standards, while working at Westchester Hospital in Florida. (Tr. 414.) Finally, Respondent testified that while working at APM and CCHM, he turned away a large number of patients ''that I thought might have issues with medications, issues potentially with the injection of medications and so forth,'' to include patients presenting with track marks. (Tr. 500.)

[106] Respondent argues that ''to Dr. Gleaner [sic], the only acceptable method of practicing medicine or treating pain would be his way and his way only.'' (Resp't Br. 26.) This statement is not supported by the record. Dr. Glener's testimony as to standard of care refers to ''the law . . . and appropriate medical practice'' as well as the expectations of other physicians. (Tr. 318–19.) Additionally, his testimony as to the requirements of Florida law is internally consistent and corroborated by general and specific statements contained in the Florida Administrative Code. *Compare* Tr. 319 (emphasizing importance of discussion of risks and benefits, performing a physical examination and formulating a diagnosis and treatment plan), *with* Fla. Admin. Code Ann. rr. 64B8–9.013(3)(c), (3)(a), (3)(f)(1) & (3)(b).

[107] *See, e.g.,* 21 C.F.R. § 1306.04(a) (controlled substances prescription must be ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.''); Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (controlled substances prescription must be for a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan''); *see also, e.g.,* Fla. Admin. Code Ann. r. 64B8–9.013(1)(d) (physician's duty to ''be diligent in preventing the diversion of drugs for illegitimate purposes''); Fla. Admin. Code Ann. r. 64B8–9.013(3)(b) (''The written treatment plan should state objectives that will be used to determine treatment success * * *'' as well as other elements); Fla. Admin. Code Ann. r. 64B8–9.013(3)(c) (''The physician should discuss the risks and benefits of the use of controlled substances with the patient * * *''); Fla. Admin. Code Ann. r. 64B8–9.013(3)(e) (''[t]he physician should be willing to refer the patient as necessary for additional evaluation and treatment* * * Special attention should be given to those pain patients who are at risk for misusing their medications and [who] * * * pose a risk for medication misuse or diversion.''); Fla. Admin. Code Ann. r. 64B8–9.013(3)(f) (''The physician is required to keep accurate and complete records to include, but not be limited to .* * * [t]he medical history and physical examination * * *'').

[108] As discussed below, I find that Respondent has failed to accept responsibility for his prescribing-related misconduct.

[109] Making a finding that Respondent's prescribing in these instances was improper would require engaging in pure speculation. ''Speculation is, of course, no substitute for evidence, and a decision based on speculation is not supported by substantial evidence.'' *White ex rel. Smith v. Apfel,* 167 F.3d 369, 375 (7th Cir. 1999) (citing *Erhardt v. Sec'y, DHS,* 969 F.2d 534, 538 (7th Cir. 1992)).

Agency precedent has held that such evidence is entitled to some evidentiary weight only in cases where a practitioner credibly demonstrates an acceptance of responsibility and reform of past practices.

[E]vidence that a practitioner has treated thousands of patients does not negate a prima facie showing that the practitioner has committed acts inconsistent with the public interest. While such evidence may be of some evidentiary weight in assessing whether a practitioner has credibly shown that she has reformed her practices, where a practitioner commits intentional acts of diversion and insists she did nothing wrong, such evidence is entitled to no weight.

Jayam Krishna-Iyer, M.D., 74 Fed. Reg. 459, 463 (DEA 2009).

Although I have carefully considered the evidence of Respondent's past positive experiences in dispensing controlled substances, to include his present practice at MEC, I find those experiences are considerably outweighed by the substantial evidence of Respondent's repeated misconduct in issuing controlled substance prescriptions to undercover law enforcement officers for other than a legitimate medical purpose and outside the usual course of professional practice, in violation of federal and state law. The weight of Respondent's prior positive experiences is further diminished by Respondent's failure on the whole to admit or accept responsibility for any wrongdoing with regard to his prescribing-related misconduct at APM and CCHM.[110]

Factor 5: Such Other Conduct Which May Threaten the Public Health and Safety

Under Factor Five, the Administrator is authorized to consider ''other conduct which may threaten the public health and safety.'' 5 U.S.C. § 823(f)(5). The Agency has accordingly held that ''where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for his or her actions and demonstrate that he or she will not engage in future misconduct. *Patrick W. Stodola,* 74 Fed. Reg. 20,727, 20,734 (DEA 2009).[111] ''[A]n applicant/registrant is required not only to accept responsibility for [his] misconduct, but also to demonstrate what corrective measures [he] has undertaken to prevent the re-occurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 Fed. Reg. 8,194, 8,236 (DEA 2010) (quoting *Jayam Krishna-Iyer, M.D.,* 74 Fed. Reg. 459, 464 n.8 (DEA 2009)).

A ''[r]espondent's lack of candor and inconsistent explanations'' may serve as a basis for denial of a registration. *John Stanford Noell, M.D.,* 59 Fed. Reg. 47,359, 47,361 (DEA 1994). Additionally, ''[c]onsideration of the deterrent effect of a potential sanction is supported by the CSA's purpose of protecting the public interest.'' *Joseph Gaudio, M.D.,* 74 Fed. Reg. 10,083, 10,094 (DEA 2009).

Respondent argues generally that the Government has failed to establish by a preponderance of evidence that Respondent's continued registration would be inconsistent with the public interest. (Resp't Br. 23.) To the contrary, after balancing the foregoing public interest factors, I find that the Government has established by substantial evidence a prima facie case in support of revoking Respondent's registration.[112]

Once DEA has made a prima facie case for revocation or denial, the burden shifts to the respondent to show that, given the totality of the facts and circumstances in the record, revoking or denying the registration would not be appropriate. *See Morall v. DEA,* 412 F.3d 165, 174 (DC Cir. 2005); *Humphreys v. DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz v. United States Dep't of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 Fed. Reg. 72, 311 (DEA 1980). Respondent argues that if the Government has ''met its burden and made a prima facie case for the revocation of Dr. Casanova's license, Dr. Casanova has put forth sufficient mitigating evidence to assure the DEA Deputy Administrator that he can be entrusted with a Certificate of Registration.'' (Resp't Br. at 23.)

In fact, Respondent's testimony pertaining to whether he accepted responsibility for his past misconduct is ambivalent. To his credit, Respondent testified that regarding his recordkeeping violations,

[t]he bottom line is that I ultimately am responsible and was held accountable and I wasn't aware of the fact that he had not gotten the rest of the information. Maybe there was a misunderstanding in regards to the pedigree paperwork and so forth. I am fully aware of that and irrespective of the results of these hearings, I plan to provide all the appropriate information that is required and necessary.

(Tr. 449.) Upon inquiry from his attorney on direct examination, Respondent testified that he ''fully understand[s]'' that audit results need to zero out, and that he ''[o]ne hundred percent'' intends to take all steps necessary to make sure that any future deliveries are properly documented. (Tr. 450.) In addition, it is undisputed that Respondent fully and completely cooperated in the inspection of his registered location on February 23, 2011, to include access to records and inventory. (Tr. 114–15, 119–20.) Moreover, Respondent consented to a March 29, 2011 inspection of his registered location and cooperated, giving agents full access to everything they needed, although he was not required to do so. (Tr. 152, 184; Gov't Ex. 19(a).) Respondent's expression of remorse for his recordkeeping violations, his cooperation with authorities throughout the inspection and audit process and his promise of future compliance all reflect favorably on Respondent and weigh in favor of a finding that Respondent's continued registration would be consistent with the public interest.

In stark contrast to his acceptance of responsibility regarding his recordkeeping violations, however, Respondent in numerous instances declined to accept responsibility for his prescribing-related misconduct. For instance, Respondent unapologetically stated at hearing that he adheres to a standard of conduct that is different than that of other doctors. (*See* Tr. 446–47.) Under the Florida Administrative Code, a treatment plan is one of the standards for the use of controlled substances for pain control. *See* Fla. Admin. Code Ann. r. 64B8–9.013(3). ''The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function and should indicate if any further diagnostic evaluations or other treatments are planned * *.'' Fla. Admin. Code Ann. r. 64B8–9.013(3)(b). But when asked whether his own approach complied with the Florida Standards, Respondent became evasive and testified that ''a treatment plan is something [that] in my opinion differs from the other physicians. I believe that a treatment plan doesn't happen over one visit, * * *.'' (Tr. 467.) Respondent's belief that he is entitled to follow standards that depart from those promulgated by the Florida Department of Health is not consistent with accepting responsibility and showing evidence of likely future compliance.[113]

The following colloquy is illustrative:

Q: Wouldn't you agree that the Florida guidelines require that you execute a treatment plan for every patient according to these guidelines, [Fla. Admin. Code Ann. r. 64B8–9.013(3)(b)], page two?

A: I would agree that I have done the—I have taken the proper steps to start a treatment objective and a treatment plan and that with only one visit that I had for the patient, I did everything that was necessary based on the information that I had in front of me.

(Tr. 468.) Respondent further testified that ''[n]ot everything is down on paper. Just because it's [not] down on paper, it's not something that didn't happen.'' [114] (Tr. 470.) This comment is flatly inconsistent with the Florida Standards, which contemplate a ''*written* treatment plan,'' *see* Fla. Admin. Code Ann. r. 64B8–9.013(3)(b) (emphasis supplied), and written records generally. While I find credible Respondent's testimony that just ''[b]ecause it's not written down on paper doesn't mean that there wasn't a

[110] The extent, *vel non,* of Respondent's acceptance of responsibility for his misconduct is discussed below.

[111] *See also Hoxie v. DEA,* 419 F.3d 477, 484 (6th Cir. 2005) (decision to revoke registration ''consistent with the DEA's view of the importance of physician candor and cooperation.'')

[112] I base this conclusion on Factors Two and Four of 21 U.S.C. § 823(f) for the reasons described above, and on Factor Five for reasons discussed in this Section.

[113] Respondent proposes that ''it was not possible to develop a proper treatment plan as treatment plans develop over time based on further information and physical examinations.'' (Resp't Br. 16 (internal citations omitted).) But before prescribing controlled substances, Respondent was nevertheless required to document a treatment plan and other elements ''not intended * * * [as] complete or best practice[s], but rather * * * what the Board considers to be within the boundaries of professional practice.'' Fla. Admin. Code Ann. r. 64B8–9.013(1)(g). Conduct falling below the minimal requirements of the Florida Standards is therefore outside the usual course of professional practice.

[114] Respondent also testified that a ''treatment plan was formulated either in terms of the documentation in the paperwork or mentally in terms of the documentation and a plan and a process.'' (Tr. 33–34.)

thought process * * *.'' (Tr. 486), the Florida Standards are unequivocal in their demand for records *documenting* the thought process, ''maintained *in an accessible manner and readily available for review.''* Fla. Admin. Code Ann. r. 64B8–9.013(3)(f)(9) (''Periodic reviews.'') (emphasis supplied). The standard of care against which Respondent's conduct is measured is not his own personal standard, but is instead a standard generally accepted and recognized in the medical community. *Robert L. Dougherty, M.D.,* 76 Fed. Reg. 16,823, 16,832 n.11 (DEA 2011).

Moreover, when repeatedly asked to identify the location of his treatment plan in SA Grafenstein's patient file, Respondent conceded that both the treatment plan and the treatment objective for SA Grafenstein consisted solely of the medications listed in the patient's discharge summary.[115] (*See* Tr. 470–72; *see also* Gov't Ex. 10 at 1.) A plain reading of the Florida Standards, however, reveals that a medication alone cannot constitute a treatment plan. Instead, the Florida Standards provide that a treatment plan should

state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function and should indicate if any further diagnostic evaluations or other treatments are planned* * * . [T]reatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

Fla. Admin. Code Ann. r. 64B8–9.013(3)(b). At a minimum, Respondent's treatment plan for SA Grafenstein lacks: (1) ''objectives that will be used to determine treatment success'' and (2) ''indicat[ions of whether] any further diagnostic evaluations * * * are planned.'' *Id.* Respondent's refusal to acknowledge these deficiencies is incompatible with a finding that Respondent has accepted responsibility for his past misconduct.

In addition, regarding his prescribing of Xanax to SA Grafenstein without first inquiring when SA Grafenstein had last taken that controlled substance, Respondent stated that ''I don't agree that by me not doing that that was [not] preventing the diversion of controlled substances.'' (Tr. 481.) Respondent's comment indicates that in similar circumstances involving real patients exhibiting warning signs of abuse or diversion, Respondent would likely repeat the same course of conduct in the future. Respondent's evidence fails to overcome the rebuttable presumption that ''past performance is the best predictor of future performance * * *.'' *Medicine Shoppe—Jonesborough,* 73 Fed. Reg. at 387 (citing *ALRA Labs, Inc. v. DEA,* 54 F.3d 450, 452 (7th Cir. 1995)).

Respondent's testimony at hearing provided additional indications that he believes the Florida Standards do not necessarily apply to him and that he might not comply with them in the future. As noted above, Respondent failed to discuss the risks and benefits of the controlled substances he provided to SA Cortes (Tr. 482–83; *see* Gov't Ex. 14 at 8), in violation of Florida Administrative Code Rule 64B8–9.013(3)(c). His testimony suggested that he did not engage in such a discussion during SA Cortes's initial visit, but that he might on a subsequent visit. (*See* Tr. 483.) When asked if the Florida Standards contained an exception for the first visit, Respondent testified ''[i]t could be a matter of style or what have you in terms of how you do things with the initial visits and follow-up visits and so forth.'' (Tr. 484.) Yet Respondent later acknowledged that ''[t]here's no particular exemptions here for the first visit.'' (Tr. 484.) Respondent barely acknowledges that he violated the informed consent provision of the Florida Standards, much less accepts responsibility for the violation and promises future compliance.

Similarly, Respondent acknowledged on cross-examination that he failed to document a treatment plan in SA Saenz's patient record (Tr. 490–91, 492), but also stated: ''I think you keep on using and harping on treatment plan in regards to being an issue. An appropriate treatment care [sic] was delivered for this acute injury without question.'' (Tr. 491.) Respondent's statement is not consistent with accepting responsibility for his violation of Florida Administrative Code Rule 64B8–9.013(1)(b) (describing parameters of ''appropriate documentation'' to include a treatment plan); and Rule 64B8–9.013(3)(b) (contemplating a ''written treatment plan''). To the contrary, Respondent's testimony reflects an attempt to trivialize his noncompliance.

Additional examples of Respondent's failure to accept responsibility for past misconduct exist but further elaboration is unnecessary. In summary, Respondent's testimony reflected an overall lack of admission of his past misconduct with respect to his prescribing practices, let alone acceptance of responsibility. In light of the foregoing, Respondent's evidence as a whole fails to sustain his burden to accept responsibility for his misconduct and to demonstrate that he will not engage in future misconduct. I find that Factor Five weighs in favor of a finding that Respondent's continued registration would be inconsistent with the public interest.

V. Conclusion and Recommendation

Under Factors Two, Four and Five of 21 U.S.C. § 823(f), I recommend that Respondent's DEA COR BC8677746 be revoked on the grounds that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. §§ 824(a)(4) and 823(f).

Dated: September 29, 2011

Timothy D. Wing
Administrative Law Judge

[FR Doc. 2012–23058 Filed 9–18–12; 8:45 am]

BILLING CODE 4410–09–P

[115] Respondent also stated that the treatment plan ''begins with the diagnosis and * * * includes the medications * * * and that is the initial process of the treatment plan * * *.'' (Tr. 469.)

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0054]

Proposed Renewal of Existing Information Collection; Fire Protection (Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 75.1100–3, 75.1103–5(a)(2)(ii), 75.1103–8(b) and (c), 75.1103–11, 75.1501(a)(3), and 75.1502(a) and (b). OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

DATES: All comments must be postmarked or received by midnight Eastern Time on November 19, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0054'' and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0054'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of

Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Fire protection standards for underground coal mines are based on section 311(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act). 30 CFR 75.1100 requires that each coal mine be provided with suitable firefighting equipment adapted for the size and conditions of the mine, and that the Secretary of Labor shall establish minimum requirements of the type, quality, and quantity of such equipment. 30 CFR 75.1100–3 requires that chemical fire extinguishers be examined every 6 months and that the date of the examination be recorded on a permanent tag attached to the extinguisher.

30 CFR 75.1103–5(a)(2)(ii) requires that a map or schematic be updated within 24 hours of any change in the locations of automatic fire warning sensors and the intended air flow direction at these locations. This map or schematic would be kept at a manned surface location where personnel have an assigned post of duty. This provision is added to this information collection from 1219–0145.

30 CFR 75.1103–8(a) requires that a qualified person examine the automatic fire sensor and warning device systems on a weekly basis and conduct a functional test of the complete system at least once every seven days. Section 75.1103–8(b) requires that a record of the weekly automatic fire sensor functional tests be maintained by the mine operator and kept for a period of one year. 30 CFR 75.1103–8(c) requires that sensors be calibrated in accordance with the manufacturer's calibration instructions at intervals not to exceed 31 days. Records of the sensor calibrations must be maintained by the operator and kept for a period of one year. These last two provisions are added to this information collection from 1219–0145.

30 CFR 75.1103–11 requires that each fire hydrant and hose be tested at least once a year and the records of those tests be maintained at an appropriate location.

30 CFR 75.1501(a)(3) requires the operator to certify that each responsible person is trained and that the certification is maintained at the mine for at least one year.

30 CFR 75.1502 requires each mine operator to adopt and follow a mine evacuation and firefighting program of instruction that addresses all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation. In addition, this section requires mine operators to submit this program of instruction, and any revisions, to MSHA for its approval and to train miners regarding the use of the program of instruction, and any revisions to such program of instruction, after it is approved by MSHA.

This information collection addresses the recordkeeping associated with:

75.1100–3	Condition and examination of fire fighting equipment.
75.1103–5(a)(2)(ii)	Automatic fire warning devices; actions and response.
75.1103–8(b) & (c)	Automatic fire sensor and warning device systems; examination and test requirements.
75.1103–11	Tests of fire hydrants and fire hose; record of tests.
75.1501(a)(3)	Emergency evacuations.
75.1502(a) & (b)	Mine emergency evacuation and firefighting program of instruction.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on records of fire protection in underground coal mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data with respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Fire Protection (Underground Coal Mines).
OMB Number: 1219–0054.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 75.1100–3, 75.1103–5(a)(2)(ii), 75.1103–8(b) and (c), 75.1103–11, 75.1501(a)(3), and 75.1502(a) and (b).
Total Number of Respondents: 549.
Frequency: Various.
Total Number of Responses: 294,618.

Total Burden Hours: 54,809 hours.
Total Annual Cost Burden: $693.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: September 13, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–23010 Filed 9–18–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0082]

Proposed Renewal of Existing Information Collection; Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 77.1901. OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

DATES: All comments must be postmarked or received by midnight Eastern Time on November 19, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0082'' and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0082'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. The sinking of slopes and shafts is a particularly hazardous operation where conditions change drastically in short periods of time. Explosive methane and other harmful gases can be expected to infiltrate the work environment at any time. The working environment is typically a confined area in close proximity to moving equipment. Accordingly, 30 CFR 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

This information collection addresses the recordkeeping associated with:

§ 77.1901 Records of preshift and onshift inspections.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on records of preshift and onshift inspections of slope and shaft areas of slope and shaft sinking operations at coal mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in

the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines.
OMB Number: 1219–0082.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 77.1901.
Total Number of Respondents: 27.
Frequency: Various.
Total Number of Responses: 11,880
Total Burden Hours: 14,850 hours.
Total Other Annual Cost Burden: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: September 13, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–23012 Filed 9–18–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0095]

Proposed Extension of Existing Information Collection; Explosive Materials and Blasting Units (Pertains to Metal and Nonmetal Underground Mines Deemed To Be Gassy

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for requirements under 30 CFR 57.22606(a). OMB last approved this information collection request (ICR) on February 1, 2010.

DATES: All comments must be postmarked or received by midnight Eastern Standard Time on November 19, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0095'' and sent to the Mine Safety and Health Administration (MSHA). Comments may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0095'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under Title 30 U.S. Code of Federal Regulations (30 CFR) Parts 7 and 15, the Mine Safety and Health Administration (MSHA) evaluates and approves explosive materials and blasting units as permissible for use in the mining industry. However, since there are no permissible explosives or blasting units available that have adequate blasting capacity for some metal and nonmetal gassy mines, 30 CFR 57.22606(a) outlines the procedures for mine operators to follow when using non-approved explosive materials and blasting units. The standard requires mine operators of Class III metal or nonmetal mines to notify MSHA in writing prior to their use of non-approved explosive materials and blasting units. MSHA then evaluates the non-approved explosive materials and determines whether they are safe for use in a gassy environment.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Explosive Materials and Blasting Units when used in metal and nonmetal underground mines deemed to be gassy. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses), to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in

the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

MSHA does not intend to publish the results from this information collection and is not seeking approval to either display or not display the expiration date for the OMB approval of this information collection.

There are no certification exceptions identified with this information collection and the collection of this information does not employ statistical methods.

Summary

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Explosive Materials and Blasting Units (pertains to metal and nonmetal underground mines deemed to be gassy).

OMB Number: 1219–0095.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 57.22606(a).

Total Number of Respondents: 1.

Frequency: 1.

Total Number of Responses: 1.

Total Burden Hours: 1 hour.

Total Other Annual Cost Burden: $6.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: September 13, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–23011 Filed 9–18–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0006]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of FACOSH meeting.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet October 18, 2012, in Washington, DC.

DATES:

FACOSH meeting: FACOSH will meet from 1 to 4:30 p.m., e.t., Thursday, October 18, 2012.

Submission of comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to speak at the FACOSH meeting, speaker presentations, and requests for special accommodations to attend the meeting by October 10, 2012.

ADDRESSES:

FACOSH meeting: FACOSH will meet in Room N–4437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the FACOSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov*, the federal eRulemaking Portal. Follow the online instructions for making submissions;

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648; or

Mail, express delivery, hand delivery, and messenger or courier service: You may submit materials to the OSHA Docket Office, Docket No. OSHA–2012–0006, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger/courier service) are accepted during the Department's and the OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Requests for special accommodations to attend the FACOSH meeting: You may submit requests for special accommodations by telephone, email, or hard copy to Ms. Veneta Chatmon, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0006). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section below.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting certain personal information, such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2122; email *ofap@dol.gov*.

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet October 18, 2012, in Washington, DC. FACOSH meetings are open to the public.

The tentative agenda for the FACOSH meeting includes:

- FACOSH subcommittee updates;
- Revitalization of field federal safety and health councils;
- FACOSH nominations; and,
- Secretary of Labor's Report to the President on Federal Department and Agency Occupational Safety and Health Program Activity.

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and Executive

Order 11612, as amended, to advise the Secretary of Labor on all matters relating to the occupational safety and health of federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce and how to encourage each federal Executive Branch department and agency to establish and maintain effective occupational safety and health programs.

OSHA transcribes and prepares detailed minutes of FACOSH meetings. The Agency puts transcripts, minutes, subcommittee reports, and other materials presented at the meeting in the public record of the FACOSH meeting, which is posted at *http://www.regulations.gov.*

Public Participation, Submissions, and Access to Public Record

FACOSH meetings: FACOSH meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the FACOSH meeting, please contact Ms. Chatmon (see **ADDRESSES** section).

Please submit your request for special accommodations to attend the FACOSH meeting to Ms. Chatmon.

Submission of requests to speak and speaker presentations. You may submit a request to speak to FACOSH about the topics of the meeting and speaker presentations by one of the methods listed in the **ADDRESSES** section. Your request must include:

- The amount of time you request to speak;
- The interest you represent (e.g., organization name), if any; and,
- A brief outline of your presentation.

PowerPoint speaker presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

The FACOSH Chair may grant requests to address FACOSH at his discretion, and as time and circumstances permit.

Submission of written comments. You also may submit written comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. You may supplement electronic submissions by uploading documents electronically. If you wish to submit hard copies of supplementary documents instead, you must submit them to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date, and docket number.

Because of security-related procedures, submitting comments, requests to speak, and speaker presentations by regular mail may cause a significant delay in their receipt. For information about security procedures concerning submissions by hand, express delivery, and messenger/courier service, please contact the OSHA Docket Office (see **ADDRESSES** section). OSHA will provide copies of your submissions to FACOSH members prior to the meeting.

Access to submissions and public record. OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the FACOSH public docket without change and those documents may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information, such as Social Security numbers and birthdates.

OSHA also puts meeting transcripts, minutes, work group reports, and documents presented at the FACOSH meeting in the public record of the FACOSH meeting.

To read or download documents in the public record, go to Docket No. OSHA–2012–0006, at *http://www.regulations.gov.* Although all meeting documents are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All meeting documents, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* to make submissions and to access the public record of the FACOSH meeting is available at that Web page. Please contact the OSHA Docket Office for information about materials not available through that Web page and for assistance for making submissions and obtaining documents in the public record.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information about FACOSH, is available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), 41 CFR part 102–3, section 1–5 of Executive Order 12196 (45 CFR 12729 (7/27/1980)), and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on September 14, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–23106 Filed 9–18–12; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2012–10]

Resale Royalty Right

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The U.S. Copyright Office is undertaking an inquiry at the request of Congress to review how current copyright law affects and supports visual artists; and how a federal resale royalty right for visual artists would affect current and future practices of groups or individuals involved in the creation, licensing, sale, exhibition, dissemination, and preservation of works of visual art. The Office thus seeks comments from the public on the means by which visual artists exploit their works under existing law as well as the issues and obstacles that may be encountered when considering a federal resale royalty right in the United States.

DATES: Comments must be received no later than 5 p.m. Eastern Daylight Time (EDT) on November 5, 2012.

ADDRESSES: To submit comments, please visit *http://www.copyright.gov/docs/resaleroyalty.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, submitters must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: The Adobe Portable

Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post all comments publicly on the Office's Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jason Okai, Counsel, Office of Policy and International Affairs, by telephone at 202–707–9444 or by electronic mail at *jokai@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

An artist resale royalty, or *droit de suite* as it is often called in Europe, provides artists with an opportunity to benefit from the increased value of their works over time by granting them a percentage of the proceeds from the resale of their original works of art. The royalty originated in France in the 1920s and is in general practice throughout Europe, but is not part of current United States copyright law.[1] Under the Copyright Act (the ''Act''), 17 U.S.C. 101 *et seq.,* artists, like other authors, are provided a bundle of exclusive rights, including rights to reproduce, distribute and create adaptations of the works. Federal copyright law, however, does not generally grant artists or authors rights to control the subsequent use of the original work.[2] Rather, the first sale doctrine, codified in 17 U.S.C. 109, generally permits the lawful owner of a copyrighted work to display, sell or dispose of the work without the authorization of the creator under most circumstances.

For many authors of works such as books, musical works and sound recordings, the copyright system provides substantial economic benefits and incentives through subsequent uses or performances of those works by way of licensing or contractual arrangements. For example, an author may sell rights in his or her novel to a publisher, or sell the right to create a screenplay to a writer, or sell the right to create a motion picture from that screenplay. At each point in the life cycle of that novel, numerous opportunities arise for the author to earn income from the original novel without having to write another book or restrict the number of books available for purchase in the marketplace. Indeed, a novelist and his publisher may offer millions of copies of the same book to buyers, a filmmaker may distribute millions of DVDs of his film, and a songwriter may authorize millions of downloads. In each case, every purchaser receives the same work and for the same value as the original.

By contrast, in the case of certain visual artworks, there can only be one sale at a time, and only the initial sale will inure to the benefit of the actual creator. A sculptor or painter may spend months or years creating one work of art and when that work is completed it is a unique and singular representation of the artist's intent. Unlike books, DVDs or songs, the value of the work is based on its originality and scarcity. This means that over time, it may be a collector or other downstream entity that will derive the most financial benefit.

The Office recognizes that buyers of artworks, including collectors, galleries and auction houses, frequently purchase artworks as investments. These persons may act as important catalysts over time, helping to increase the value of certain artworks through exhibitions and additional sales, or by supporting the careers of artists through payment or promotion. The question thus becomes one of perceived fairness under the law. Should these agents and investors benefit exclusively, or should they be compelled to provide some additional compensation to the artists who made the buyers' profits possible? Indeed, California purportedly developed its state law on resale royalties in part as a result of the indignation felt by many within the artistic community when Robert Rauschenberg's 1958 painting ''Thaw,'' which was originally sold for $900, was resold at auction fifteen years later for $85,000 without compensation to the artist.[3] According to some sources, certain fine art can appreciate by more than 10% in value per year.[4]

To be clear, any artist may by contract attempt to negotiate a partial interest in his work with a buyer, thereby reserving for him or herself a financial interest in its future value. However, this is by no means a common practice for transactions of fine art, even for accomplished artists, and it seems unlikely for one who is just starting out. There are also some accommodations available to visual artists in the broader marketplace. For example, some artists may exploit their works in other ways, such as through reproductions or the creation of derivative works. For some, this may be lucrative; however, for others the very nature of their visual art may limit the ability to create such derivative markets. In general, although visual art may be reproduced or adapted in the form of prints, postcards, miniature models of sculptures or even refrigerator magnets, the income realized from the sales of these items is not likely to approach the income that the original artwork will bring if it increases in value and is sold and resold at auction, in private galleries or through private sales.

A. Previous Inquiry

In 1991, Congress requested the Copyright Office to conduct a study on the feasibility of legislation that would require purchasers of works of art, subsequent to the initial sale of the work, to pay the artist or the artist's heirs a percentage of the sale price. Published in December 1992, the Copyright Office report concluded that there was insufficient economic and copyright policy justification for enacting resale royalty right or *droit de suite* legislation in the United States.[5] The Office expressed concern that implementing a resale royalty right might be harmful to visual artists who lack a viable resale market because primary market prices might decline as a result of factoring in the future royalty. The Office further explained that imposing a federal resale royalty on sales transactions may conflict with the traditional United States concept of free alienability of property. The Office proposed alternatives to a resale royalty right, including compulsory licenses, broader display rights, rental rights and federal grants for public works of art. The Office also identified eight areas to be considered if legislation were to be proposed: Oversight, types of sales, threshold amount, term, foreign authors,

[1] Resale royalty rights are optional under applicable international treaties. *See* Berne Convention for the Protection of Literary and Artistic Works, art. 14*ter,* Jul. 24, 1971, 25 U.S.T. 1341, 8282 U.N.T.S. 221 (as amended Sep. 28, 1979).

[2] Visual artists are granted very limited rights to prevent certain modifications to their works under the Visual Artists Rights Act (VARA), 17 U.S.C. 106A. VARA does not provide additional economic benefits.

[3] *See* Patricia Cohen, *Artists File Lawsuits Seeking Royalties,* New York Times, Nov. 1, 2011, available at *http://www.nytimes.com/2011/11/02/arts/design/artists-file-suit-against-sothebys-christies-and-ebay.html?pagewanted=all.*

[4] *See* Joshua Rogers, *How to Outsmart the Billionaires Who'll Bid $80 Million for ''The Scream,''* Forbes, Apr. 4, 2012, available at *http://www.forbes.com/sites/joshuarogers/2012/04/04/how-to-outsmart-the-billionaires-wholl-bid-80-million-for-the-scream/.*

[5] *See* United States Copyright Office, *Droit De Suite: The Artist's Resale Royalty* 2 (1992) (''Report''), available at *http://www.copyright.gov/history/droit_de_suite.pdf.*

alienability, types of works and retroactivity. Congress did not enact legislation creating a resale royalty right at the federal level and there has been no formal congressional deliberation on this topic since the 1992 report. In its report, the Copyright Office also suggested that Congress may wish to review the issue if the European Community extended royalty rights to all of its Member States.

B. International Developments

Since the Office published its study in 1992, the legal landscape in foreign jurisdictions with respect to resale royalty treatment has changed. In 1992, thirty-six countries had resale royalty legislation; today, that number has increased to more than sixty.[6] In 2001, the European Union adopted a Directive generally requiring Member States to implement harmonized resale royalty legislation by 2006.[7] The Directive requires Member States to establish a royalty for all resales involving an art market professional, including auctions, private dealers and galleries. Member States have some flexibility to determine what threshold resale price would trigger the royalty below €3,000 (euros), and to provide for compulsory or optional collective management of the royalty. The Directive caps the royalty at €12,500, regardless of the resale price. As a result of the Directive, *droit de suite* is now a component of national laws across the European community. The United Kingdom, which is one of the largest art markets in the world, implemented its resale royalty legislation in 2006. Artists also receive resale royalties in many countries outside of the European Union, including Algeria, Australia, Bolivia, Brazil, Bulgaria, Burkina Faso, Chile, Congo, Columbia, Costa Rica, Croatia, Ecuador, Guatemala, Guinea, Hondorus, Iraq, Ivory Coast, Laos, Madagascar, Mali, Mexico, Monaco, Morocco, Nicaragua, Paragua, Panama, Peru, Peru, Philippines, Romania, Russian Federation, Senegal, Serbia and Montenegro, Tunisia, Turkey, Uruguay and Venezuela.[8]

C. State Law

To date, the only resale royalty legislation in the United States has been at the state level in California, where it has operated with mixed success. The California Resale Royalty Act was enacted in 1976 and imposes several conditions prior to payment of the royalty: The artist must be a U.S. citizen or a California resident of at least two years; the seller must reside in California or the sale executed in California; the artwork must be ''fine art,'' (*i.e.,* an original sculpture, painting, drawing, or work in glass); and the work must be sold for more money than was paid for it and for at least $1,000.[9] The seller or seller's agent is required to pay the 5% royalty directly to the artist or the artist agent. If the latter cannot be found, the seller or seller's agent must pay the royalty to the California Arts Council, which continues the search for the beneficiary artist. The California Arts Council does not charge an administrative fee for this service.

Notably, after thirty-five years on the books, a federal district in California recently declared the California Resale Royalty Act unconstitutional under the Commerce Clause. The court concluded that the state statute impinged on the federal government's authority to control commerce among the states because it regulated sales occurring wholly outside of California.[10] An appeal is pending in the United States Court of Appeals for the Ninth Circuit.

D. Proposed Legislation

On December 15, 2011, Senator Kohl of Wisconsin and Representative Nadler of New York introduced bills in the 112th Congress titled, *Equity for Visual Artists Act of 2011* (EVAA), S.2000 and H.R. 3688 respectively. The EVAA requires a resale royalty right, under certain circumstances, to be collected from the seller. The proposed royalty would be triggered when a work of visual art is sold at auction for at least $10,000 by someone other than the authoring artist. Following the sale, the entity receiving the proceeds pays a royalty of 7% to a qualifying visual artists' collecting society. The collecting society is required to distribute 50% of the net royalty to the artists or successor as copyright owner and place the other 50% of net royalty into an escrow account to support U.S. nonprofit museums in their future purchases of visual art created by living artists domiciled in the United States. Failure to remit the royalty to the collecting society is copyright infringement subject to statutory damages. The EVAA also directs the Register of Copyrights to issue regulations governing the designation and oversight of visual artists' collecting societies.

In a letter dated May 17, 2012, Senator Kohl and Representative Nadler requested that the Copyright Office ''assess how existing law affects and supports visual artists, and how a federal resale royalty provision would affect copyright law, visual artists and those involved in the sale of art work.''

The Office therefore seeks comments from interested parties on how visual artists exploit their works under existing law, including any limitations due to the nature of visual art, and the effect, if any, a resale royalty right would have on the promotion, dissemination and sale of works of visual art.

II. Discussion

There are a variety of factors to consider when examining how visual art is treated under the Copyright Act and whether a federal resale royalty right would foster the goals of the copyright system. Among the issues are:

Current Copyright Law Implications: The first sale doctrine (17 U.S.C. 109) is a fundamental tenet of U.S. law. It helps to maintain the copyright system's balance between incentives for authors and the public's interest in widespread dissemination of copyrighted works. How a federal resale royalty right would affect the first sale doctrine is therefore of paramount interest to the Office, as is the interaction with any other exceptions and limitations that support the dissemination of works of art to the public.

Promoting Production of Creative Works: Copyright law furthers the creation and/or distribution of new works and provides authors (and those who invest in the works of authors) with certain incentives and protections under the law. Therefore, whether the adoption of a federal resale royalty regime would further incentivize and protect the authors of certain visual artworks is also of paramount interest to the Office.

Fostering the Art Marketplace: The effect of a resale royalty on current or future markets is a related, important question, though that is not to say that the law must or should protect all existing business models. Is it possible, however, that a resale royalty right

[6] *See id. at* 8; *see also* The Artist's Resale Right Regulations, 2006 S.I. 346 (U.K.), at art. 2, schedule 2; *Liste de Pays Dont le Ressotissants Beneficiant du Droit de Suite a Juin 2007* (''List of Countries'') [List of Countries whose Citizens Benefit from the Resale Royalty Right as of June 2007], Societe des Auteurs dans les Arts Graphiques et Plastiques, available at *http://www.adagp.fr/ENG/Liste_pays_droit_de_suite.pdf.*

[7] Council Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the Resale for the Benefit of the Author of an Original Work of Art, art 1, 2001 O.J. (L 272) 32–36.

[8] *See Liste de Pays Dont le Ressotissants Beneficiant du Droit de Suite a Juin 2007* [List of Countries whose Citizens Benefit from the Resale Royalty Right as of June 2007], Societe des Auteurs dans les Arts Graphiques et Plastiques, *available at http://www.adagp.fr/ENG/Liste_pays_droit_de_suite.pdf.*

[9] CAL. CIV. CODE § 986 (West 2012).

[10] *See Estate of Graham v. Sotheby's Inc.,* 11–CV–08604, 2012 WL 1765445 at *1–2 (C.D. Cal. May 17, 2012).

might add to the costs of those who buy and invest in artworks and, if so, are such costs acceptable from a policy perspective? In this regard, the art market should be broadly defined, including emerging artists, heirs, investors and collectors.

Scope and Applicability of a Royalty: A threshold question is what categories of works should be covered under a resale royalty right. For example, the California resale royalty provision governs works of ''fine art, ''while the European Directive covers all ''original works of art.'' The EVAA would cover works of ''visual art'' as defined in Section 101 of the U.S. Copyright Act. The Office is aware that some artists today work in series, producing limited numbers of identical works and some works that may have been sold as unique creations in the past are now sold in copies including, for example, so-called Internet Art. Moreover, some artists, though certainly not most, are moving from a business model where works are sold to one where access is licensed. Such issues may inform the appropriate scope of fine art, original art or the like.

Contractual Considerations: For any number of reasons, an artist or his or her heirs may not wish to participate in the resale royalty right process through a collecting society, and may wish instead to pursue payment of a royalty directly from the seller; or an artist or his or her heirs may wish to waive or contractually discharge his or her right to receive the royalty. For example, an artist may wish to waive the right to receive the royalty in return for a higher initial sale price rather than wait the years or decades for a work to sell at auction, or an artist may wish to contract privately with the initial seller to provide for a payment of a percentage of any future sales, although the enforceability of this type of contractual term has been questioned. In each instance, however, it is the artist setting their individual terms of sale and determining individual contractual obligations with each initial seller, not a statute. Alternatively, an artist may prefer to receive a lesser royalty in return for a third party to administer and distribute payments due. Perspective on the issue of how to address the contractual issues associated with a resale royalty right, including whether the right should be transferable or waivable, is helpful to the Office in exploring the practical effect of a resale royalty.

Types of Transactions: Art is bought and sold through myriad channels and venues. Many artists are affiliated with galleries that buy, consign, sell and even resell works to private or corporate clients. Other transactions occur in well publicized auctions, private auctions, online or even through direct internet sales. The laws in California, United Kingdom, France and Australia appear to cover a broad range of transactions involving art market professionals, including those through online sales, private galleries and auctions. Given the variety of ways in which works of art are sold or transferred in the U.S. and across borders, a significant factor for the Office to consider is to what extent a resale royalty should apply or be managed in the numerous commercial channels, or whether the resale royalty should apply to some types of transactions and not others.

Duration of Term: One of the rationales for having a copyright term extending post mortem of the author is to provide income and benefits to the heirs of the artist or author. This rationale may not apply in the same way to a federal resale royalty. Many countries, however, simply follow their general copyright term (such as life of the author plus seventy years), while the California state law uses a term of life of the author plus twenty years. Thus, consideration should be given to the appropriate duration of such a right and how the specific duration or term of a right would support the goals of the copyright system.

Threshold Values: Not every artist's works sell for tens of thousands or even millions of dollars. Many works may be resold by collectors for hundreds or thousands of dollars at local auctions, charity events, or perhaps even some larger sales events. Any such resulting royalty from these smaller payments may be outweighed by the costs incurred by making the payment. Also, if an artwork is sold at a charity event, the proceeds are not realized by the seller, but by the charity. Under a traditional rubric, it appears that the charity would be responsible for payment of the royalty, which lessens the amount it may redirect toward its charitable efforts. The Office would find it helpful to explore the issue of whether a minimum amount of money realized from a sale must be attained in order for the requirement of a royalty payment to be made, and if so, what standards would be appropriate. For example, the California resale royalty applies to sales of $1,000 or more, while the European directive sets a maximum threshold of €3,000. The EVAA would impose a $10,000 threshold on transactions subject to the royalty. It would be helpful to receive information about these varying approaches and how the different thresholds may support the goals behind the royalty.

Payment and Enforcement: It is possible that under a resale royalty scheme, the artist and the subsequent seller may have no contractual relationship and therefore the only obligation on the payer of the royalty would likely be statutory. Therefore, any statute would likely include provisions to enforce the payment of the royalty and remedies to both the artist and the collective management organization should such an organization be utilized. One may also envision a situation in which the artists or his or her heirs are unable to be located. The seller may not know how or have the means to locate the artist or heirs, and may be under obligation to pay the royalty indefinitely.

Calculating a Royalty: The basis for calculating a resale royalty could be set in different ways, for example, based on the present sale price of the art work, or its appreciated value (*i.e.,* the difference between the initial sale price and present sale price). Each formula for calculating a royalty rate could have different consequences for the artist and seller and would need to be considered as part of the royalty mechanisms in place.

Royalty Rate: The amount of the royalty could affect the market and artists in different ways and should be assessed, including reviewing the experience of other jurisdictions. The EVAA would set a royalty rate of 7%, while California and Australia set a royalty of 5%. The European Directive adopts a sliding scale based on the amount of the transaction, from 5% for transactions involving sales of €50,000 to a royalty of only 0.25% for transactions over €500,000. The European Directive also caps the maximum royalty at €12,500. The Office seeks information about what factors should be considered in setting an appropriate royalty rate and how the royalty rate might affect artists and the art market.

Administration of a Royalty: Additionally, if the royalty payments are collectively managed, administrative costs born by the collecting society are usually deducted from the final payment to the artist rather than added to the cost of the royalty paid by the seller. The final amount paid to the artist or his or her heirs will undoubtedly be less than the amount collected and may not be fully known until payment is made. In addition, a certain level of transparency in such a collecting society would be required in order to provide the artists and his or her heirs with a sufficiently clear

accounting of payments in relation to the administrative costs associated with operating as the collecting society. It would be helpful to understand whether collective management of royalty payments should be proposed, and if so, what type of entity should be authorized (*e.g.,* government or private) and what standards should apply.

Experience in other Jurisdictions: As noted above, a resale royalty currently applies under state law in California, as well as in many European and Latin American countries. These jurisdictions have taken different approaches to the issues identified above (*i.e.,* transactions covered, thresholds, royalty rates and administration). It would be helpful for the Copyright Office to receive information on the practical experience of those jurisdictions, any obstacles that may have been encountered, and data on the effect of the right on those markets.

Changes Since the Last Report: The Copyright Office last reviewed the resale royalty in 1992. It is therefore interested in any information addressing whether there have been significant policy or economic changes that should be considered when assessing the current feasibility of a resale royalty.

Alternatives to a Resale Royalty: As the Copyright Office acknowledged in its 1992 report, there may be alternatives to a resale royalty that would further the goals of promoting creativity and the public dissemination of visual art.

IV. Subject of Inquiry and Conclusion

The Office hereby seeks comment from the public on factual and policy matters addressed above, including the potential effect of a resale royalty on visual artists, current copyright law and practical implications for commerce. If there are any pertinent issues not discussed above, the Office encourages interested parties to raise those matters in their comments. The Office may also publish a further Notice of Inquiry posing specific questions and possibly exploring additional alternatives following the receipt of comments in response to this Notice.

Dated: September 13, 2012.

Karyn Temple Claggett,

Senior Counsel for Policy and International Affairs.

[FR Doc. 2012–23076 Filed 9–18–12; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration

ACTION: Notice of opening of additional materials

SUMMARY: This notice announces the opening of additional Nixon Presidential Historical Materials by the Richard Nixon Presidential Library and Museum, a division of the National Archives and Records Administration. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the Agency has identified, inventoried, and prepared for public access additional textual materials with certain information redacted as required by law, including the PRMPA.

DATES: The Richard Nixon Presidential Library and Museum intends to make the materials described in this notice available to the public on Tuesday, October 23, 2012, at the Richard Nixon Library and Museum's primary location in Yorba Linda, CA, beginning at 10:00 a.m. PDT/1:00 p.m. EDT. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense within 30 days of the publication of this notice.

ADDRESSES: The Richard Nixon Presidential Library and Museum, a division of the National Archives, is located at 18001 Yorba Linda Blvd., Yorba Linda, CA. Researchers must have a NARA researcher card, which they may obtain when they arrive at the Library. Selections from these materials will be available at *www.nixonlibrary.gov*. Petitions asserting a legal or constitutional right or privilege that would prevent or limit public access to the materials must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Rd., College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Paul Wormser, Acting Director, Richard Nixon Presidential Library and Museum, 714–983–9119.

SUPPLEMENTARY INFORMATION: The following materials will be made available in accordance with this notice:

1. Previously restricted textual materials. Volume: 91 documents consisting of approximately 1,000 pages. A number of textual materials previously withheld from public access have been reviewed for release and/or declassified under the systematic declassification review provisions of Executive Order 13526, the Freedom of Information Act (5 U.S.C. 552), or in accordance with 36 CFR 1275.56 (Public Access regulations). The materials are from integral file segments for the National Security Council Institutional Files; and the Henry A. Kissinger (HAK) Office Files.

Dated: September 7, 2012.

David Ferriero,

Archivist of the United States.

[FR Doc. 2012–22993 Filed 9–18–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 19, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be

provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0011, 1 item, 1 temporary item). Master files of an electronic information system containing records related to allegations of fraud, waste, and abuse received by the Office of Inspector General.

2. Department of Health and Human Services, Immediate Office of the Secretary (DAA–0468–2011–0006, 3 items, 1 temporary item). Background materials, working files, drafts, and notes of the Secretary's correspondence. Proposed for permanent retention are official correspondence, master files of an electronic information system containing scanned correspondence, significant working files, and drafts.

3. Department of Justice, U.S. Trustee Program (DAA–0060–2012–0004, 2 items, 2 temporary items). Inputs and master files of an electronic information system which tracks final bankruptcy trustee reports.

4. Department of Labor, Office of the Secretary (N1–386–12–1, 3 items, 1 permanent item). Records of the Employees' Compensation Appeals Board, including records relating to docket files and general files. Proposed for permanent retention are decisions and orders.

5. Department of Treasury, Internal Revenue Service (N1–58–12–1, 12 items, 12 temporary items). Records include corporations' income tax forms, schedules, and related records used to report income, deductions, and tax liabilities.

6. Department of Treasury, Internal Revenue Service (N1–58–12–6, 1 item, 1 temporary item). Master files of an electronic information system used to validate public access for online services.

7. Department of Treasury, Internal Revenue Service (N1–58–12–16, 6 items, 6 temporary items). Inputs, outputs, master files, and system documentation of electronic information systems used to monitor organizational and business performance and to evaluate customer service and employee training activities.

8. Congressional Budget Office, Agency-wide (N1–520–12–1, 14 items, 6 temporary items). Comprehensive schedule covering all agency records, including general working files, background information, drafts, administrative files, and non-significant correspondence. Proposed for permanent retention are final products distributed to the public and to Congress, essential models and analytic files, significant correspondence, product files for senior agency officials and panels of advisers, and official policies and manuals.

9. Environmental Protection Agency, Agency-wide (DAA–0412–2012–0002, 2 items, 2 temporary items). Records related to health and safety, including property safety inspections

10. Environmental Protection Agency, Agency-wide (DAA–0412–2012–0004, 3 items, 3 temporary items). Records relating to the acquisition and management of facilities, including design, layout, construction, lease, and ownership agreements.

11. Environmental Protection Agency, Agency-wide (DAA–0412–2012–0007, 3 items, 3 temporary items). Records related to activities associated with planning, preparing, and monitoring business-related travel.

12. Federal Communications Commission, International Bureau (N1–173–11–6, 3 items, 3 temporary items). Circuit status reports filed annually by common carriers providing international telecommunications service, the instruction manual used to file reports, and annual statistical compilations of all received reports.

13. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2012–0002, 4 items, 4 temporary items). Records relating to mobile and stationary lifting equipment. Included are design files, inspection reports, servicing documents, and operator inspection records.

Dated: September 10, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–22995 Filed 9–18–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 04008964, NRC–2012–0214]

Power Resources, Inc., Smith Ranch Highland Uranium Project; License Renewal Request, Opportunity To Request a Hearing and To Petition for Leave To Intervene, and Commission Order Imposing Procedures for Document Access

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of license renewal 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 November 19, 2012. Any potential party as defined in 10 CFR 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information and/or Safeguards Information is necessary to respond to this notice must request document access by October 1, 2012.

ADDRESSES: Please refer to Docket ID NRC–2012–0214 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 is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2012–0214. Address questions about NRC dockets to Carol Gallagher 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 Smith Ranch Highland Uranium Project license renewal request is available electronically in ADAMS: Accession No. ML12234A537 (Smith Ranch Technical Report); Accession No. ML12234A539 (Smith Ranch Environmental Report). In addition to the technical report and environmental report, PRI submitted copies of its Wyoming Department of Environmental Quality (WDEQ) reports. These are available in ADAMS under Accession No. ML12234A545 (Smith Ranch WDEQ Permit); Accession No. ML12234A547 (North Butte WDEQ Permit); Accession No. ML12234A548 (Gas Hills WDEQ Permit); Accession No. ML12234A554 (Ruth WDEQ Permit). Documents related to the application can be found in ADAMS under Docket No. 04008964.
- *NRC's PDR:* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Douglas T. Mandeville, Senior Project Manager, Uranium Recovery Licensing 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: 301–415–0724; fax number: 301–415–5369; email: *douglas.mandeville@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated February 1, 2012, Power Resources Inc. (PRI) submitted a request to renew Source Material License SUA–1548 to the U.S. Nuclear Regulatory Commission (NRC). License SUA–1548 authorizes uranium in-situ recovery (ISR) operations at the Smith Ranch Highland Uranium Project and its related satellite facilities at Gas Hills, Ruth, and North Butte. The Smith Ranch Highland Uranium Project is located in Converse County, Wyoming. The Gas Hills satellite facility is located in Fremont and Natrona Counties, Wyoming. The Ruth satellite is located in Johnson County, Wyoming. The North Butte satellite is located in Campbell County, Wyoming. PRI has requested that License SUA–1548 be renewed as a performance-based license for an additional 10-year period. The renewal, if granted, would allow for continued operations and the recovery of uranium using ISR techniques as previously licensed by the NRC.

An NRC administrative review, documented in a letter to PRI dated July 5, 2012, found the application acceptable to begin a technical review (ADAMS Accession No. ML12159A511). Prior to approving the renewal 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 (Environmental Assessment or an Environmental Impact Statement). The environmental review report will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on a renewal to Source Material License SUA–1548 to continue operation of the Smith Ranch Highland Uranium Project. 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 Part 2, section 2.309, which is available at the NRC's PDR, located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 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/.*

III. Petitions for Leave To Intervene

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. 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 amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which 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 for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment 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 that, 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 Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file contentions that are filed after the deadline in 10 CFR 2.309(b) will not be entertained absent a determination by the presiding officer that the new or amended filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (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 November 19, 2012. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance under 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

IV. Electronic Submissions (E-Filing)

All documents filed in 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 ten (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 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 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 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 EIE, users will be required to install a Web browser plug-in from the NRC 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 public 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 public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* 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 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 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 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);

(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 to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement 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

[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.

[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.

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, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor 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 requestor 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.

Dated at Rockville, Maryland, this 13th day of September 2012.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—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/requestor 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.

[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. 2012–23064 Filed 9–18–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2012–0002].

DATES: Week of September 24, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of September 24, 2012—Tentative

Tuesday, September 25, 2012

9:25 a.m.—Affirmation Session (Public Meeting) (Tentative)

a. *Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative* (North Anna Power Station, Unit 3); Blue Ridge Environmental Defense League's (BREDL) Petition for Review of CLI–12–14 (Tentative)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording) (301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: September 14, 2012.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–23198 Filed 9–17–12; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–56; Order No. 1464]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services contract to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: September 21, 2012.

ADDRESSES: Submit comments 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 *https://www.prc.gov/pre-pages/filing-online/login.aspx.* Commenters 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* (for electronic filing assistance).

SUPPLEMENTARY INFORMATION:

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II. Commission Action
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I. Introduction

Notice of filing. On September 11, 2012, the Postal Service filed a notice announcing that it is entering into an additional Global Expedited Package Services (GEPS) 3 contract.[1] The Notice was filed in accordance with 39 CFR 3015.5. Notice at 1.

Background. Customers for GEPS contracts are small- or medium-size businesses that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. *Id.* at 4. Governors' Decision No. 08–7 (as GEPS 1) established prices and classifications not of general applicability for GEPS contracts. *Id.* at 1. A grouping for GEPS 3 contracts was later added to the competitive product list as an outcome of Docket Nos. MC2010–28 and CP2010–71. The contract filed in Docket No. CP2010–71 is the baseline agreement for purposes of establishing whether subsequent agreements proposed for inclusion within the GEPS 3 grouping are functionally equivalent. *Id.* at 1–2.

Contents of filing. The filing includes a Notice, along with the following attachments:

- Attachment 1–redacted copy of the instant contract;
- Attachment 2–the redacted certification required under 39 CFR 3015.5(c)(2);
- Attachment 3–redacted copy of Governors' Decision No. 08–7 (including attachments thereto); and
- Attachment 4–application for non-public treatment of the materials filed under seal.

It also includes material filed under seal (consisting of the contract and supporting documents); and Excel spreadsheets as to supporting financial data and information.

In the Notice, the Postal Service asserts that the instant contract and the baseline contract are functionally equivalent because they share similar cost and market characteristics. *Id.* at 3. It notes that the pricing formula and classification established in the Governors' Decision No. 08–7 ensure that each GEPS contract meets the criteria of 39 U.S.C. 3633 and related regulations. *Id.* The Postal Service identifies differences between the instant contract and the baseline contract, but asserts that the differences do not affect either the fundamental service being offered or the fundamental structure of the contract. *Id.* at 3–6. The Postal Service also addresses pertinent Mail Classification Schedule matters. *Id.* at 3. It states that, based on the discussion in its Notice and the financial data provided under seal, the instant GEPS 3 contract is in compliance with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline contract, and therefore should be added to the GEPS 3 product grouping.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, September 11, 2012 (Notice).

Expiration. The agreement is set to expire 1 year after the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained, including a favorable conclusion by the Commission. *Id.*

II. Commission Action

The Commission establishes Docket No. CP2012–56 for consideration of matters raised in the Notice. Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632 and 3633. Comments are due no later than September 21, 2012. The public portions of the Postal Service's filing can be accessed via the Commission's Web site at *http://www.prc.gov.*

The Commission appoints James F. Callow to represent the interest of the general public (Public Representative) in this case.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–56 for consideration of matters raised in the Postal Service's September 11, 2012 Notice.

2. Pursuant to 39 U.S.C. 505, the Commission designates James F. Callow to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this case.

3. Comments by interested persons are due no later than September 21, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–23110 Filed 9–18–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 13, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 43 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2012–48, CP2012–58.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–23081 Filed 9–18–12; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 13, 2012, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 42 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2012–47, CP2012–57.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–23082 Filed 9–18–12; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding three Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and purpose of information collection:* Employee Representative's Status and Compensation Reports; OMB 3220–0014.

Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term ''employee'' includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railway labor organization other than a labor organization included in the term ''employer,'' as defined in the RRA, who before or after August 29, 1935, was in the service of an employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR part 209.10.

The RRB utilizes Forms DC–2a, *Employee Representative's Status Report,* and DC–2, *Employee Representative's Report of Compensation,* to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (77 FR 40657 on July 10, 2012) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employee Representative's Status and Compensation Reports.

OMB Control Number: 3220–0014.

Form(s) submitted: DC–2 and DC–2a.

Type of request: Revision of a currently approved collection of information.

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

Changes proposed: The RRB proposes a minor editorial change to both Forms DC–2 and DC–2a.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
DC–2a	3	15	1
DC–2	65	30	33
Total	68		34

2. Title and Purpose of information collection: Nonresident Questionnaire; OMB 3220–0145. Under Public Laws 98–21 and 98–76, benefits under the Railroad Retirement Act payable to annuitants living outside the United States may be subject to taxation under United States income tax laws. Whether the social security equivalent and non-social security equivalent portions of Tier I, Tier II, vested dual benefit, or supplemental annuity payments are subject to tax withholding, and whether the same or different rates are applied to each payment, depends on a beneficiary's citizenship and legal residence status, and whether exemption under a tax treaty between the United States and the country in which the beneficiary is a legal resident has been claimed. To effect the required tax withholding, the Railroad Retirement Board (RRB) needs to know a nonresident's citizenship and legal residence status.

To secure the required information, the RRB utilizes Form RRB–1001, *Nonresident Questionnaire,* as a supplement to an application as part of the initial application process, and as an independent vehicle for obtaining the needed information when an annuitant's residence or tax treaty status changes. Completion is voluntary. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (77 FR 40658 on July 10, 2012) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Nonresident Questionnaire.

OMB Control Number: 3220–0145.

Form(s) submitted: RRB–1001.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the Railroad Retirement Act, the benefits payable to an annuitant living outside the United States may be subject to withholding under Public Laws 98–21 and 98–76. The form obtains the information needed to determine the amount to be withheld.

Changes proposed: The RRB proposes no changes to Form RRB–1001.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
RRB–1001	1,300	30	650

3. Title and Purpose of information collection: Statement of Claimant or Other Person; OMB 3220–0183.

To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to a change in an annuity beginning date(s), date of marriage(s), birth(s), prior railroad or non-railroad employment, an applicant's request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G–93, *Statement of Claimant or Other Person,* to obtain from applicants or other persons, the supplemental or corrective information needed to determine applicant eligibility for an RRA annuity or RUIA benefits. Completion is voluntary. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (77 FR 40658 on July 10, 2012) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement of Claimant or Other Person.

OMB Control Number: 3220–0183.

Form(s) submitted: G–93.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to

benefits. The collection obtains information supplementing or changing information previously provided by an applicant.

Changes proposed: The RRB proposes no revisions to Form G–93.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–93	900	15	225

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*.

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–22991 Filed 9–18–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67848; File No. SR–C2–2012–032]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Rule Regarding Mandatory Trading Permit Holder Education and Corresponding Set of Fines

September 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 4, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

C2 proposes to adopt a rule requiring Trading Permit Holder (''TPH'') education and corresponding fine structure. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Commission's Web site (*http://www.sec.gov*), 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

The Exchange proposes to adopt proposed Rule 6.46 stating that TPHs and persons associated with TPHs (''Associated Persons'') are required to attend such educational classes as the Exchange may require from time to time. Failure to attend Exchange-mandated continuing educational classes may subject TPHs and Associated Persons to sanctions pursuant to the Exchange's Minor Rule Violation Plan provided in Exchange Rule 17.50. The Exchange believes that it is important and necessary from time to time to require mandatory participation in certain educational training classes by its TPHs and Associated Persons for a variety of reasons, including to explain the operation of new technology and new rules, procedures and policies regarding trading on the Exchange. The text of the proposed Rule 6.46 is identical to that of Chicago Board Options Exchange, Incorporated (''CBOE'') Rule 6.20(e) (with the exclusion of a sentence in CBOE Rule 6.20(e) regarding Floor Officials, which is inapplicable to C2, as C2 is an all-electronic exchange that does not have a trading floor).[3]

To correspond with the adoption of proposed Rule 6.46, the Exchange also proposes to amend its Rule 17.50—Imposition of Fines for Minor Rule Violations. CBOE Chapter 17—Discipline (which includes Rule 17.50—Imposition of Fines for Minor Rule Violations) is incorporated into the C2 rules by reference as C2 Chapter 17.[4] CBOE Rule 17.50(g)(6)—Violations of Trading Conduct and Decorum Policies—imposes fines for violations of trading conduct and decorum policies. Because C2 (an all-electronic exchange) does not have a trading floor, the majority of the violations for which fines can be imposed under CBOE Rule 17.50(g)(6) (such as not complying with the trading floor dress code, bringing impermissible food or drink onto the trading floor, and running on the trading floor) could not take place on C2. However, there is one exception: CBOE Rule 17.50(g)(6) allows for the imposition of fines for the failure to attend CBOE-mandated educational training.[5] Therefore, instead of simply stating that, with respect to applicability to C2 only, CBOE Rule 17.50(g)(6) shall not apply to C2, the Exchange instead proposes to state that, notwithstanding the remainder of C2 Chapter 17, with respect to its applicability to C2 only, CBOE Rule 17.50(g)(6)—Violations of Trading Conduct and Decorum Policies—will be replaced in its entirety with the following: A fine may be imposed upon a Trading Permit Holder or persons associated with Trading Permit Holders in accordance with the fine schedule set forth below for failure

[3] *See* CBOE Rule 6.20(e).

[4] *See* Securities Exchange Act Release No. 62323 (June 17, 2010), 75 FR 36144 (June 24, 2012) (SR–C2–2010–002).

[5] *See* CBOE Regulatory Circular RG09–92 (August 28, 2009).

to attend Exchange-mandated educational training (per Rule 6.46).

Number of offenses in any rolling twenty-four month period	Fine amount
1st Offense	$1,000
2nd Offense	2,500
Subsequent Offenses	5,000

In making this change, C2 cleans up its rules and establishes that the aspects of CBOE Rule 17.50(g)(6) that are not relevant to C2 (due to C2's status as an all-electronic exchange without a trading floor) do not apply to C2 while still retaining the ability to levy fines for failure to attend C2-mandated educational training (per the proposed Rule 6.46). The amounts of the proposed fines are identical to those that can be currently assessed on CBOE for a failure to attend CBOE-mandated educational training.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Establishing both a rule requiring TPHs and Associated Persons to attend such educational classes as the Exchange may require from time to time and a corresponding guideline for fines for the failure to attend such educational classes helps ensure that TPHs and Associated Persons are educated and knowledgeable as necessary regarding relevant technologies, rules, procedures and policies. This removes impediments to and to perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest.

By removing inapplicable sections violations within Rule 17.50(g)(6) that relate to floor trading, the Exchange eliminates confusion that could arise from reading Exchange rules and circulars, thereby removing impediments to and perfecting the mechanism for a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

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 No. SR–C2–2012–032 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 No. SR–C2–2012–032. 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 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 C2. 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 No. SR–C2–2012–032 and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23036 Filed 9–18–12; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* CBOE Regulatory Circular RG09–92 (August 28, 2009).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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 Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67849; File No. SR–NASDAQ–2012–103]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Investor Support Program Under Rule 7014 and To Amend NASDAQ's Schedule of Execution Fees and Rebates Under Rule 7018

September 13, 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 August 31, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

NASDAQ proposes to modify the Investor Support Program under Rule 7014, and to amend NASDAQ's schedule of execution fees and rebates under Rule 7018. NASDAQ will implement the proposed change on September 4, 2012. The text of the proposed rule change is available at *nasdaq.cchwallstreet.com*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing (i) to modify the ISP under Rule 7014, and (ii) to amend NASDAQ's schedule of execution fees and rebates under Rule 7018(a). As a general matter, the changes are designed to reflect the persistent reduction in trading volumes in the U.S. capital markets through a range of changes that will both increase incentives for market participation and enhance revenue.

Investor Support Program

The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (''targeted liquidity''). The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[3] The Exchange noted in its original filing to institute the ISP[4] that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. Currently, a member that participates in the ISP receives a credit of $0.00005, $0.000275, or $0.000375 per share with respect to the number of shares of displayed liquidity provided by the member that execute at $1 or more per share.[5] The precise credit rate is determined by factors designed to measure the degree of the member's participation in the Nasdaq Market Center and the percentage of orders that it enters that execute—its ''ISP Execution Ratio''—which is seen as indicative of retail or institutional participation. Without making any other modifications to the program, NASDAQ will reduce the credit paid to market participants that currently qualify for a $0.000275 per share credit to $0.0001 per share. The specific requirements for qualifying for the $0.0001 credit are described below.

As provided in Rule 7014(c)(2), NASDAQ will pay a credit of $0.0001 per share[6] with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.00005 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio[7] for the month exceeds its Baseline Participation Ratio[8] by at least 0.43%.

[3] The Commission has expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[4] Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness).

[5] A participant in the ISP must designate specific order-entry ports for use in tabulating certain requirements under the program.

[6] A reduction from $0.000275 per share.

[7] ''Participation Ratio'' is defined as follows: ''[F]or a given member in a given month, the ratio of (A) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume.'' ''Consolidated Volume'' is defined as follows: ''[F]or a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' ''System Securities'' means all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[8] ''Baseline Participation Ratio'' is defined as follows: ''[W]ith respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).'' ''Indirect Order Flow'' is

The requirement reflects the expectation that in order to earn a higher rebate under the program, a member participating in the program must increase its participation in NASDAQ as compared with an historical baseline.

(2) The member's ''ISP Execution Ratio'' for the month must be less than 10. The ISP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.'' [9] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month, reflecting the ISP's goals of encouraging higher levels of liquidity provision.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports. This requirement is designed to mitigate ''gaming'' of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders.

Alternatively, as provided in Rule 7014(c)(3), NASDAQ will pay a credit of $0.0001 per share [10] with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.00005 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.30%.

(2) The member's ''ISP Execution Ratio'' for the month is less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 80% of the liquidity provided by the member during the month is provided through ISP-designated ports.

(5) The member has an average daily volume during the month of more than 100,000 contracts of liquidity provided through one or more of its Nasdaq Options Market market participant identifiers (''MPIDs''), provided that such liquidity is provided through Public Customer Orders, as defined in Chapter I, Section 1 of the Nasdaq Options Market Rules; and

(6) The ratio between shares of liquidity provided through ISP-designated ports and total shares accessed, provided, or routed through ISP-designated ports during the month is at least 0.70.

Execution Fees and Rebates

NASDAQ is making a number of changes to its general schedule of fees and rebates for order execution. Overall, the changes are designed to (i) raise additional revenue to offset reductions caused by a sustained decrease in trading volumes in the U.S. capital markets, (ii) continue the process of replacing volume-based pricing tiers measured by share volume with tiers measured by a market participant's percentage of ''Consolidated Volume,'' [11] and (iii) enhance market participation incentives by broadening the eligibility for several rebate tiers. Specifically, NASDAQ is proposing to make the following changes to Rule 7018(a), which governs execution and routing of order for securities priced at $1 or more per share:

- Currently, NASDAQ pays a credit of $0.0029 per share executed with respect to displayed quotes/orders for a member with shares of liquidity provided in all securities through one or more of its NASDAQ Market Center MPIDs that represent more than 0.45% of Consolidated Volume during the month. NASDAQ is modifying this rebate tier to increase the requirement to 0.50% of Consolidated Volume.
- Similarly, NASDAQ currently pays a credit of $0.0029 per share executed with respect to displayed quotes/orders for a member with shares of liquidity accessed in all securities through one or more of its MPIDs that represent more than 0.65% of Consolidated Volume during the month, and that provides a daily average of at least 2 million shares of liquidity in all securities through one or more of its NASDAQ Market Center MPIDs during the month. NASDAQ is proposing to eliminate this rebate tier.[12]
- Currently, NASDAQ pays a credit of $0.0027 per share executed with respect to displayed quotes/orders for a member with an average daily volume in all securities of more than 25 million shares of liquidity provided through one or more of its NASDAQ Market Center MPIDs during the month. The requirement for this tier is being modified to require that the member provide liquidity representing more than 0.30% of Consolidated Volume. NASDAQ believes that given the volume levels that have recently prevailed in the market, the change will make it slightly easier for members to qualify for this pricing tier.
- Similarly, NASDAQ pays a credit of $0.0025 per share executed with respect to displayed quotes/orders for a member with an average daily volume in all securities of more than 20 million shares of liquidity provided through one or more of its NASDAQ Market Center MPIDs during the month. The requirement for this tier is being modified to require that the member provide liquidity representing more than 0.10% of Consolidated Volume. Again, NASDAQ believes that this change will make it easier for members to qualify for this pricing tier.
- NASDAQ currently pays a credit of $0.0025 per share executed with respect to displayed quotes/orders for a member with shares of liquidity accessed in all securities through one or more of its MPIDs that represent 0.20% or more of Consolidated Volume during the month, and with shares of liquidity provided in all securities during the month representing 0.10% or more of Consolidated Volume during the month. NASDAQ is proposing to eliminate this rebate tier.[13]
- NASDAQ currently pays a credit of $0.0025 per share executed with respect

defined as follows: ''[F]or a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member's direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month.''

[9] These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of ''immediate or cancel'' orders and therefore cannot be liquidity-providing orders.

[10] A reduction from $0.000275 per share.

[11] See Securities Exchange Act Release No. 64453 (May 10, 2011), 76 FR 28252 (May 16, 2011) (SR–NASDAQ–2011–062). ''Consolidated Volume'' is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities.

[12] Other rebate tiers under which members may be eligible to receive rebates of $0.00295 or $0.0029 per share will remain unchanged.

[13] Other rebate tiers under which members may be eligible to receive rebates of $0.0025 per share will remain unchanged or will have their associated rebate increased.

to displayed quotes/orders for a member with shares of liquidity provided in all securities through one or more of its NASDAQ Market Center MPIDs representing more than 0.10% of Consolidated Volume during the month, and with an average daily volume during the month of more than 100,000 contracts of liquidity accessed or provided through one or more of its NASDAQ Options Market MPIDs. NASDAQ is proposing to increase the rebate for this tier to $0.0027 per share executed.

• NASDAQ currently pays a credit of $0.0029 per share executed with respect to displayed quotes/orders for a member with shares of liquidity provided in all securities through one or more of its NASDAQ Market Center MPIDs representing more than 0.15% of Consolidated Volume during the month, and with an average daily volume during the month of more than 100,000 contracts of liquidity accessed or provided through one or more of its NASDAQ Options Market MPIDs. NASDAQ is proposing to increase the Consolidated Volume requirement for this tier to 0.25%.

For securities listed on an exchange other than NASDAQ or the New York Stock Exchange (''Tape B Securities''), NASDAQ currently charges a discounted order execution fee of $0.0027 per share executed with respect to an order entered through a NASDAQ Market Center MPID through which a member (i) accesses shares of liquidity in Tape B Securities that represent more than 1.5% of Consolidated Volume in Tape B Securities during the month, and (ii) provides shares of liquidity in Tape B Securities that represent more than 0.5% of Consolidated Volume in Tape B Securities during the month. Similarly, NASDAQ currently charges a discounted order execution fee of $0.0028 per share executed with respect to an order entered through a NASDAQ Market Center MPID through which a member (i) accesses shares of liquidity in Tape B Securities that represent more than 0.5% of Consolidated Volume in Tape B Securities during the month, and (ii) provides shares of liquidity in Tape B Securities that represent more than 0.25% of Consolidated Volume in Tape B Securities during the month. NASDAQ is eliminating both of these discounted fees, such that the uniform access fee will be $0.0030 per share executed for all securities priced above $1.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Changes to the ISP

The ISP encourages members to add targeted liquidity that is executed in the Nasdaq Market Center. NASDAQ believes that the reduction in the rebates paid under the ISP from $0.000275 to $0.0001 with respect to certain tiers of the ISP is reasonable, because it provides a means for NASDAQ to reduce costs during a period of persistently low trading volumes, while maintaining the overall structure of the ISP for the purpose of providing incentives for retail and institutional investors to provide targeted liquidity at NASDAQ. The change is consistent with an equitable allocation of fees: although the change maintains the ISP's purpose of paying higher rebates to certain market participants in order to encourage them to benefit all NASDAQ members through the submission of targeted liquidity, the change reduces the disparity between rebates paid to ISP participants and other members for providing liquidity. Similarly, although NASDAQ believes that the price differentiation inherent in the ISP is fair, because it is designed to benefit all market participants by drawing targeted liquidity to the Exchange, the change reduces the level of differentiation between the rebates paid to ISP participants and those paid to other liquidity providers.

Changes to Fees and Other Rebates

NASDAQ believes that the proposed change to the fee to access liquidity in Tape B Securities is reasonable because NASDAQ already charges the same fee with respect to other securities, and because the fee is consistent with the requirements of SEC Rule 610.[16] The change is consistent with an equitable allocation of fees because it will result in uniform access fees for all market participants and all securities. Similarly, the change is not unreasonably discriminatory because it will eliminate existing price differentials among market participants with respect to execution of orders for Tape B Securities.

NASDAQ further believes that the proposed changes to rebate tiers are reasonable, because they are not expected to result in significant rebate reductions for market participants. This is the case because members that no longer qualify for rebate tiers whose criteria are being restricted will likely qualify for other tiers that pay an enhanced rebate, while other market participants are likely to qualify for tiers that they have not qualified for in the past. Thus, although some market participants may see reduced rebates, NASDAQ does not believe that the reductions will be significant. NASDAQ further believes that the changes are consistent with an equitable allocation of fees because the modified rebate schedule will continue to provide the incentives for provision of displayed liquidity that NASDAQ believes benefit all market participants by dampening price volatility and promoting price discovery. Finally, NASDAQ believes that the changes are not unreasonably discriminatory because opportunities for enhanced rebates to liquidity providers will continue to exist under the modified schedule. Specifically:

• The change to one of the rebate tiers through which members may earn a $0.029 [sic] per share executed rebate by requiring liquidity representing 0.50% of Consolidated Volume (rather than 0.45% of Consolidated Volume), as well as the elimination of another $0.0029 per share rebate tier that requires shares of liquidity accessed that represent more than 0.65% of Consolidated Volume during the month and provision of a daily average of at least 2 million shares of liquidity, are reasonable because members may continue to receive a rebate of $0.0029 per share through several alternative tiers, or may qualify for slightly lower rebates of $0.0027 per share or $0.0025 per share through a range of alternative tiers. In addition, the changes are consistent with an equitable allocation of fees because after the change, the rebate schedule will continue to reflect an allocation of rebates to liquidity providers designed to encourage beneficial market activity, with affected market participants still able to earn comparable or slightly lower rebates through alternative means. Finally, the changes are not unreasonably discriminatory because although they affect only those market participants currently qualifying for the tiers in question, they serve the reasonable purposes of reducing costs while continuing to provide reasonable rebate opportunities to those participants.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] 17 CFR 242.610.

• The changes to express the requirements for certain $0.0027 and $0.0025 per share tiers in terms of percentage of Consolidated Volume rather than share amounts is reasonable because at currently prevailing volume levels, the changes will make it easier for market participants to qualify for these tiers. The changes are consistent with an equitable allocation of fees because they encourage liquidity provision and help to ensure that market participants affected by changes that restrict eligibility for other rebate tiers will continue to have alternative means to earn a favorable rebate. Finally, the changes are not unreasonably discriminatory because they broaden the eligibility of members to receive rebates at these levels.

• The elimination of the $0.0025 per share tier requiring liquidity accessing equal or greater to 0.20% of Consolidated Volume and liquidity provision of 0.10% or more of Consolidation Volume is reasonable because affected members will continue to qualify for the modified tier requiring comparable liquidity provision in order to earn a $0.0025 per share rebate. Thus, the change is also consistent with an equitable allocation of fees, and is not unreasonably discriminatory, because it will not deprive market participants of the rebate opportunity in question.

The increase in the rebate paid with respect to market participants providing liquidity representing 0.10% of Consolidated Volume and active in the NASDAQ Options Market, as well as the tightening of the requirements for a $0.0029 per share credit paid to market participants active in both the NASDAQ Market Center and the NASDAQ Options Market, are reasonable because they provide an increased rebate to members currently in the lower tier while ensuring that members no longer qualifying for the higher tier can nevertheless receive the new higher rebate for the lower tier. The changes are consistent with an equitable allocation of fees because the modified rebates continue to be responsive to the convergence of trading in which members simultaneously trade different asset classes within a single strategy. NASDAQ also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets also supports price discovery and liquidity provision in the NASDAQ Market Center. Finally, the changes are not unreasonably discriminatory, since NASDAQ Market Center participants have alternative means of early rebates of $0.0027 or $0.0029 per share rebates that do not require participation in the NASDAQ Options Market.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. These competitive forces help to ensure that NASDAQ's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their trading behavior.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[17] 15 U.S.C. 78s(b)(3)(a)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–103 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–

NASDAQ–2012–103 and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23037 Filed 9–18–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67851; File No. SR–OCC–2012–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Financial Reporting by Canadian Clearing Members

September 13, 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 September 5, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule would make technical ''housekeeping'' changes to OCC's By-Laws and Rules relating to financial reporting by Canadian clearing members to reflect the Investment Industry Regulatory Organization of Canada's (''IIROC'') adoption of the International Financial Reporting Standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to make technical ''housekeeping'' changes to OCC's By-Laws and Rules relating to financial reporting by Canadian clearing members to reflect the Investment Industry Regulatory Organization of Canada's (''IIROC'') adoption of the International Financial Reporting Standards.

OCC Rule 310, through cross-references to interpretive provisions of OCC Rule 306—Financial Reports and OCC Rule 308-Audits, allows Canadian clearing members to elect to file their Joint Regulatory Financial Questionnaire and Reports (''JRFQR'') with OCC, instead of filing SEC Form X–17A–5, to discharge their financial reporting requirements to OCC. In addition, other provisions of OCC's rules (Rules 301, 302, 303, 304, 306 and 308) reference information Canadian clearing members report on their JRFQR. IIROC, the primary regulator of Canada's securities industry, replaced the JRFQR with ''Form 1'' of the International Financial Reporting Standards. OCC proposes to replace references to the JRFQR within its By-Laws and Rules with references to ''Form 1.''[3] OCC also proposes to add an Interpretation and Policy to Rule 304 in response to a change in how IIROC requires regulated entities to report capital withdrawals.

OCC, as part of its financial surveillance program, requires Canadian clearing members to submit their JRFQR, a financial report similar to SEC Form X–17A–5, to OCC at the end of each month. OCC also monitors the financial health of such clearing members using the capital levels reported on their JRFQRs. In 2011, IIROC replaced the JRFQR with Form 1. Among other things, Form 1 aligns the reporting of certain financial liabilities to U.S. Generally Accepted Accounting Principles. Canadian clearing members that use Form 1 report the same, and in some cases more conservative, amounts of regulatory capital to OCC as they had using the JRFQR. Moreover, OCC believes that the change does not impair OCC's ability to conduct diligent financial surveillance of Canadian clearing members. Accordingly, OCC proposes to replace references to the ''JRFQR'' within its By-Laws and Rules with references to ''Form 1.''

The IIROC also altered how its regulated entities report capital withdrawals. IIROC previously required capital withdrawals to be reported on monthly financial reports; however, IIROC amended its standards and now requires firms to obtain approval for withdrawals of capital following notice thereof. OCC had, when applicable, adjusted Canadian clearing member's reported capital levels in light of withdrawals reflected in financial reports in order to determine if the firm's capital falls within OCC's standards. With the change implemented by IIROC, that information is no longer available to OCC via monthly financial reports submitted by Canadian clearing members. To ensure it is aware of such capital withdrawals, OCC proposes to add an Interpretation and Policy to Rule 304 which would require Canadian clearing members to submit capital withdrawal notifications to OCC when such requests are submitted to IIROC.

OCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the ''Act''), because it promotes the prompt and accurate clearance and settlement of securities transactions, and protects investors and the public interest by allowing OCC to efficiently monitor the financial health of its clearing members. The change is intended to facilitate Canadian clearing members' compliance with OCC's By-Laws and Rules by aligning OCC's financial reporting requirements, as they pertain to Canadian clearing members, with those of the IIROC. It is also intended to ensure OCC has appropriate information about Canadian clearing members' capital withdrawals, which will no longer be reported to OCC on a monthly basis. The proposed rule change is not inconsistent with any rules of OCC, including any other rules 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 not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC does not propose to amend Rule 310 since it does not specifically use the term, ''Joint Regulatory Financial Questionnaire and Reports.''

to the proposed rule change and none have been received.

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 Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2012–15 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–2012–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_15.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–2012–15 and should be submitted on or before October 10, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23039 Filed 9–18–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67855; File No. SR–BATS–2012–037]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

September 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[4] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 4, 2012.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 ''Equities Pricing'' section of its fee schedule effective September 4, 2012, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. (''EDGA'') through the Exchange's TRIM routing strategies.[6] EDGA is implementing certain pricing changes effective September 4, 2012, including modification from a fee to remove liquidity of $0.0007 per share to a rebate of $0.0004 per share when removing liquidity. To maintain a direct pass through of the applicable economics for executions at EDGA, the Exchange proposes to rebate $0.0004 per share for an order routed through its TRIM routing strategies and executed on EDGA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined in BATS Rule 11.13(a)(3)(G).

rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror the rebate applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at EDGA Exchange, the proposed fee change is designed to equal the rebate that a Member would have received if such routed orders would have been executed directly by a Member at EDGA Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective 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–BATS–2012–037 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.

All submissions should refer to File Number SR–BATS–2012–037. 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–BATS–2012–037 and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23103 Filed 9–18–12; 8:45 am]

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[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67853; File No. SR–BYX–2012–020]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

September 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 4, 2012.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 its fee schedule applicable to use of the Exchange effective September 4, 2012, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. (''EDGA'') through either a BYX + EDGA Destination Specific Order [6] or through the Exchange's TRIM routing strategies.[7] EDGA is implementing certain pricing changes effective September 4, 2012, including modification from a fee to remove liquidity of $0.0007 per share to a rebate of $0.0004 per share when removing liquidity. To maintain a direct pass through of the applicable economics for executions at EDGA, the Exchange proposes to rebate $0.0004 per share for an order routed through its TRIM routing strategies and executed on EDGA. Similarly, because EDGA is part of the Exchange's ''One Under/Better'' pricing program for Destination Specific Orders, the Exchange intends to rebate $0.0001 per share more than if a Member executed an order directly on EDGA. Accordingly, the Exchange proposes to rebate $0.0005 per share for an order routed as a Destination Specific Order to EDGA and executed on EDGA, which is $0.0001 per share more than EDGA rebates directly. The Exchange's ''One Under/Better'' pricing does not apply to securities priced below $1.00. In addition, the Exchange will maintain the pricing currently charged by the Exchange for all other Destination Specific Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide an improvement over the rebate applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at EDGA Exchange, the proposed fee change is designed to equal or exceed the rebate that a Member would have received if such routed orders would have been executed directly by a Member at EDGA Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder,[11] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective 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–BYX–2012–020 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.

All submissions should refer to File Number SR–BYX–2012–020. 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

[6] As defined in BYX Rule 11.9(c)(12).

[7] As defined in BYX Rule 11.13(a)(3)(G).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

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–BYX–2012–020 and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23102 Filed 9–18–12; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67854; File No. SR–BATS–2012–036]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees Applicable to the Exchange's Competitive Liquidity Provider Program.

September 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to institute a fee change in connection with an incentive program for Exchange-registered market makers (''Market Makers'') in securities listed on the Exchange. Changes to the Exchange's fees pursuant to this proposal will be effective upon filing. The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.[5] More recently, the Exchange received approval to operate a program that is designed to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers (''CLPs'') to enhance liquidity on the Exchange in Exchange-listed securities (''Competitive Liquidity Provider Program'' or ''CLP Program'').[6] The Exchange subsequently adopted financial incentives for the Competitive Liquidity Provider Program.[7] These incentives include daily rebates to CLPs awarded based on competitive quoting activity and the waiver of applicable execution fees in Exchange auctions of Exchange-listed securities. The Exchange proposes to eliminate the waiver of fees for executions in Exchange auctions by CLPs, as further described below. The Exchange also proposes to correct a typographical error in its rules relating to the numbering of the financial incentives for the CLP Program. Specifically, when the CLP Program was originally proposed, the Exchange numbered the section applicable to financial incentives as section (k), and reserved that section for later.[8] However, when such financial incentives were adopted, they were adopted as section (j).[9] Accordingly, the Exchange proposes re-numbering the financial incentives section as (k), as was originally intended, and eliminating the reference to ''Reserved.''

In order to incentivize Members to participate in the CLP Program, the Exchange currently waives applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. Based on the Exchange's experience in operating the CLP Program, the Exchange proposes to eliminate the waiver of applicable execution fees for CLPs. This financial incentive has very rarely been applicable, as the majority of the orders entered to date by CLPs that have participated in Exchange auctions have been order types that are not subject to a charge when entered by any Member (certain orders, including orders entered into the Exchange's order book not explicitly designated for the auction process, are exempt from fees). In light of this fact, the burden upon the Exchange in administering the fee waiver exceeds the benefit provided to CLPs pursuant to the current pricing structure, particularly in light of the fact that all other financial incentives to CLPs will remain unchanged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities

[5] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[6] *See* Securities Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) (''CLP Program Approval'').

[7] *See* Securities Exchange Act Release No. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011) (''CLP Financial Incentives Filing'').

[8] *See* CLP Program Approval, supra note 6.

[9] *See* CLP Financial Incentives Filing, supra note 7.

exchange, and, in particular, with the requirements of Section 6 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the elimination of the waiver of auction fees is equitable and not unreasonably discriminatory because it will equally affect all CLPs and because CLPs will be charged the same rates for auction executions as are charged to all other Members. The Exchange believes that the elimination of the waiver of auction fees is reasonable because the waiver has not resulted in significant savings to CLPs nor has it provided the intended incentive to participate in the CLP Program.

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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder,[13] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective 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–BATS–2012–036 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.

All submissions should refer to File Number SR–BATS–2012–036. 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–BATS–2012–036 and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23101 Filed 9–18–12; 8:45 am]

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[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67852; File No. SR–NASDAQ–2012–105]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete NASDAQ Rule 7032

September 13, 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 September 12, 2012, the NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to delete NASDAQ Rule 7032. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to delete Rule 7032, Late Fees. This rule is identical to former NASD Rule 7080, which was applicable to charges imposed by the Nasdaq Market Center prior to NASDAQ's exchange registration and separation from FINRA (then NASD) in 2006. Prior to 2006, the business decision was made not to assess late fees under NASD Rule 7080; however, the rule inadvertently was not deleted from the rulebook and subsequently was included in the NASDAQ rules. Because members historically have not been assessed late fees under this Rule, and NASDAQ has determined not to do so in the future, NASDAQ is proposing to delete Rule 7032.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Sections 6(b)(4) and (5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. NASDAQ believes that the proposed rule change is reasonable, equitable and non-discriminatory in that it is eliminating a fee provision that NASDAQ has determined is not necessary and the change applies to all NASDAQ members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[5] and paragraph (f)(6) of Rule 19b–4 thereunder,[6] in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. NASDAQ provided such notice on August 16, 2012.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–105. 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 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–105, and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23040 Filed 9–18–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67850; File No. SR–NSCC–2012–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Which: (i) Eliminates the Practice of Netting of Creations and Redemptions of Index Receipts Prior to Their Entering NSCC's Accounting Operation, and (ii) Effects Certain Other Technical Changes

September 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 4, 2012, National Securities Clearing Corporation (''NSCC'') 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 NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was 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 proposed rule change: (i) Eliminates the practice of netting of creations and redemptions of index receipts prior to their entering NSCC's Accounting Operation, and (ii) effects certain other technical changes. Details are set forth in Exhibit 5 to NSCC's rule filing, which can be found on NSCC's Web site (*http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/SR–NSCC–2012–07.pdf*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC reports on, clears and settles domestic index receipts (i.e. shares in exchange-traded funds (''ETFs'')) and their underlying component securities through a creation/redemption process, which is initiated by a Member. As more fully described below, the purposes of the proposed rule change are to: (a) Discontinue the current practice of netting of ETF transactions prior to entering the Corporation's Accounting Operation in order to: (1) Harmonize ETF processing with that for other transaction types and (2) better facilitate Members' internal reconciliation processes, and (b) make certain technical corrections and clarifications to the Rules text with respect to current ETF processing.

NSCC's index receipt processing supports: (a) The establishment of index receipt units (creation), whereby a Member will deliver the underlying component securities or cash to the index receipt agent and receive index receipts, and (b) the redemption of index receipt units whereby a Member will deliver the index receipts and receive the underlying components or cash. NSCC facilitates the processing of these transactions as set forth below.[4]

NSCC's process for handling of index receipt transactions is set forth in Procedure II, Section G. On the day before trade date (T–1), an index receipt agent transmits files to NSCC which contain information regarding the underlying composition of index receipts for creates and redeems occurring the next business day. That evening, NSCC compiles the information and provides the respective Members with a portfolio composition report/file that lists the composition of index receipts eligible for processing. The file displays the proportionate amount of underlying components or cash[5] that comprise each index receipt. This file also contains a cash balancing component, which is an estimation of accrued dividends, cash-in-lieu of securities and any necessary balancing amount.[6] The portfolio information contained in this file is used for creation/redemption processing the next day, or Trade Date (T). On T, by such time as established by NSCC, the index receipt agent, on behalf of each Member placing an index receipt order, will report to NSCC the number of index receipts created and redeemed that day. Such transactions constitute locked-in transactions between the index receipt agent and the relevant Members. The index receipt agent also will report the final cash amount and a transaction amount which represents the transaction fee. On the night of T, NSCC transmits an index receipt instruction detail report to Members who had activity on T. The report serves as the contract for the creation/redemption activity and lists the number of component shares, on a netted basis, associated with particular creations and redemptions executed on T. Prior to entering the Corporation's Accounting Operation, each index share instruction is separated into its underlying stock components, and incorporated into the normal equity clearance and settlement process. Unsettled positions in index receipts and their component securities are risk managed as ordinary activity and guaranteed pursuant to the provisions of Addendum K.

Pursuant to the proposed Rule change, creation/redemption index receipt activity will no longer be netted prior to the general netting associated with NSCC's Accounting Operation, and thus will not appear on the Index Receipt Detail Report as netted, but will be reported in gross. The discontinuation of this ''pre-netting'' practice will harmonize NSCC's processing for ETFs with the processing of other transactions that enter the Accounting Operation which are not netted prior to entering the Accounting Operation. In addition, the reporting of the underlying components for creations and redemptions in gross will better facilitate Members' internal

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] For the NSCC rule filing which implemented ETF processing, *see* Securities Exchange Act Release No. 31601 (December 16, 1992), [File No. SR–NSCC–92–08].

[5] In 2008, NSCC expanded its index receipt processing to allow for creates and redeems using cash as the sole underlying component. This allows Members and their agent banks to create and redeem index receipts whose underlying components are not currently eligible for processing at NSCC (for example, commodity index receipts). The index receipt agent would use the cash to purchase the components, the settlement of which would occur outside of NSCC. *See* Securities Exchange Act Release No. 58694 (September 30, 2008), [File No. SR–NSCC–2008–07].

[6] The balancing amount is designed to compensate for any difference between the net asset value of the index receipt and the value of the underlying index. Among other reasons, a difference in value could result from the fact that an index receipt cannot contain fractional shares of a security. Separately, from time to time, an Index Receipt Agent may use cash-in-lieu as part of the cash balancing amount which means it would substitute the cash value of a component security for a security in the portfolio. For instance, such a substitution may be made due to difficulty in obtaining a particular security. The cash-in-lieu designation is not used where cash is the sole underlying component of a creation or redemption.

reconciliation processes by providing a comprehensive view of their activity prior to it entering the net. The proposed change will not have a substantive impact on Members or the Corporation, either operationally or from a risk perspective, as a Member's overall positions are mathematically the same, and margined equally, regardless of the whether a Member's create/redeem positions are separately netted prior to processing in the Accounting Operation. (Note: Included in NSCC's fee schedule, as set forth in Addendum A to the Rules, is an ''into the net'' charge which is volume based in terms of the dollar value of the transactions entering the Corporation's Accounting Operation. In this regard, the proposed change may have an impact on Member billing in that a gross rather than net transaction value for creations and redemptions will be fed into the Accounting Operation.)

In addition, NSCC proposes certain technical corrections and clarifications to the Section G of Procedure II, including to:

(a) Highlight the distinction between cash used as the sole underlying component versus as a partial replacement for underlying components,

(b) Indicate, consistent with the change to eliminate the ''pre-net'' of index receipts, that the Index Receipt Detail Report will report securities components for a given index receipt transaction in gross,

(c) Make a correction to reflect that the Corporation reports to Members on the Index Receipt Detail Report the details of the creations and redemptions submitted on T rather than T+1,

(d) Clarify that the Index Receipt Detail Report also shows the quantity of index receipt shares associated with the current creation and redemption activity, and

(e) Delete an incorrect reference that the Index Receipt Detail Report provides the total quantity of securities to be delivered and received on Settlement Date.[7]

Implementation timeframe:

NSCC proposes to implement the changes set forth in this filing in the third quarter of 2012. Members will be advised of the implementation date through the issuance of an NSCC Important Notice.

The proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions by harmonizing the processing of creates and redeems of index receipts with other NSCC activity and enhancing Members' abilities to reconcile such activity, as described above; and is therefore consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. The proposed rule change is consistent with the Principles for Financial Market Infrastructures as it promotes clarity in the Rules with respect to the reporting of contracts and input into the Corporation's Accounting Operation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(4)[9] thereunder. 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–NSCC–2012–07 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–NSCC–2012–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site (*http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/SR–NSCC–2012–07.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–NSCC–2012–07 and should be submitted on or before October 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23038 Filed 9–18–12; 8:45 am]

BILLING CODE 8011–01–P

[7] Quantities of all securities to be delivered and received by a Member on Settlement Date (not only with respect to index receipts) are reported to Members on the Consolidated Trade Summary.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b-4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

AER Energy Resources, Inc.; Alto Group Holdings, Inc.; Bizrocket.Com Inc.; Fox Petroleum, Inc.; Geopulse Explorations Inc.; Global Technologies Group Inc.; KMA Global Solutions International, Inc.; Mike The Pike Productions Inc.; Mobile Star Corp.; SavWatt USA Inc.; Scorpex Inc.; Silver Dragon Resources Inc.; Strategic Mining Corp.; Surgline International Inc.; Thrive World Wide Inc.; Zamage Digital Art Imaging Inc.; Order of Suspension of Trading

September 17, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of the issuers listed below. As set forth below for each issuer, questions have arisen regarding the accuracy of publicly disseminated information, concerning, among other things: (1) The company's business operations, (2) the company's current financial condition; and/or (3) issuances of shares in company stock.

1. AER Energy Resources, Inc. is a Nevada corporation based in Arizona. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

2. Alto Group Holdings, Inc. is a Nevada corporation based in Washington State. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company's operations, and concerning issuances of shares in the company's stock.

3. Bizrocket.com Inc. is a Nevada corporation based in Florida. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's revenues.

4. Fox Petroleum, Inc. is a Nevada corporation based in New York. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

5. Geopulse Explorations Inc. is a Nevada corporation based in New Mexico. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

6. Global Technologies Group Inc. is a Florida corporation based in Florida. Questions have arisen concerning the adequacy of publicly available information about the company.

7. KMA Global Solutions International Inc. is a Nevada corporation based in Ontario, Canada. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

8. Mike the Pike Productions Inc. is a Wyoming corporation based in Indiana and California. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations and the accuracy of its financial statements.

9. Mobile Star Corp. is a Delaware corporation based in California. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

10. SavWatt USA, Inc. is a Delaware corporation based in Maryland. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

11. Scorpex, Inc. is a Nevada corporation based in Nevada. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

12. Silver Dragon Resources Inc. is a Delaware corporation based in Ontario, Canada. Questions have arisen concerning the adequacy and accuracy of publicly available information about the company's operations.

13. Strategic Mining Corp. is a Wyoming corporation based in Ontario, Canada. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

14. Surgline International Inc. is a Nevada corporation based in Florida. Questions have arisen concerning the adequacy and accuracy of press releases and public filings concerning the company's operations.

15. Thrive World Wide, Inc. is a Nevada corporation based in Wisconsin. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations.

16. Zamage Digital Art Imaging, Inc. is a Nevada corporation. Questions have arisen concerning the adequacy and accuracy of press releases concerning the company's operations and the accuracy of its financial statements.

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 September 17, 2012 through 11:59 p.m. EDT, on September 28, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–23195 Filed 9–17–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Freedom Environmental Services, Inc.; Order of Suspension of Trading

September 17, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Freedom Environmental Services, Inc. (''Freedom'') because of questions regarding the adequacy and accuracy of publicly disseminated information by Freedom, and by others, in press releases to investors and in filings with the Commission concerning, among other things: (1) The identity of the persons in control of the company's operations and management; (2) the company's current financial condition; and (3) the misappropriation of corporate funds.

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 company.

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 company is suspended for the period from 9:30 a.m. EDT, on September 17, 2012 through 11:59 p.m. EDT, on September 28, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–23196 Filed 9–17–12; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8032]

In the Matter of the Designation of the Haqqani Network Also Known as HQN as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the

relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to the Haqqani Network, also known as HQN.

Therefore, I hereby designate the aforementioned organization and its aliases as a Foreign Terrorist Organization pursuant to section 219 of the INA. This determination shall be published in the **Federal Register.**

Dated: September 7, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–23119 Filed 9–18–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8035]

Notice of Public Meeting

SUMMARY: The U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (OES), Office of Marine Conservation announces that the Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission will meet on October 1, 2012.

DATES: The meeting will take place via teleconference on October 1st, 2012, from 1 p.m. to 3 p.m. Eastern time.

Meeting Details: The teleconference call-in number is toll-free 1–877–336–1831, access code 6472335, and will have a limited number of lines for members of the public to access from anywhere in the United States. Callers will hear instructions for using the access code and joining the call after dialing the toll-free number noted. Members of the public wishing to participate in the teleconference must contact the OES officer in charge as noted in the **FOR FURTHER INFORMATION CONTACT** section below no later than close of business on Friday, September 28, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Office of Marine Conservation, OES, Room 2758, U.S. Department of State, 2201 C Street NW., Washington, DC 20520. Telephone (202) 647–3464, fax (202) 736–7350, email *jonesrc2@state.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, notice is given that the Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) will meet on the date and time noted above. The panel consists of members from the states of Alaska and Washington who represent the broad range fishing and conservation interests in anadromous and ecologically related species in the North Pacific. Certain members also represent relevant state and regional authorities. The panel was established in 1992 to advise the U.S. Section of the NPAFC on research needs and priorities for anadromous species, such as salmon, and ecologically related species occurring in the high seas of the North Pacific Ocean.

The upcoming Panel meeting will focus on two major topics: (1) Review of the agenda for the 2012 annual meeting of the NPAFC (October 7–12; St. Petersburg, Russia); and (2) logistics for the U.S. Section at the NPAFC meeting. Background material is available from the point of contact noted above and by visiting *www.npafc.org.*

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance for such publication, in that this advisory committee meeting must be held on October 1st in order to prepare for the international NPAFC to be convened on October 7th.

Dated: September 13, 2012.

William Gibbons-Fly,

Director, Office of Marine Conservation, Department of State.

[FR Doc. 2012–23115 Filed 9–18–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8034]

International Joint Commission Invites Public Comment on Upper Great Lakes Report via Teleconference and Extends Public Comment Period

The International Joint Commission (IJC) announced that it is holding a teleconference to invite public comment on the final report of its International Upper Great Lakes Study Board, Lake Superior Regulation: Addressing Uncertainty in Upper Great Lakes Water Levels.

The teleconference will be held at 7 p.m. (EDT) on September 19, 2012 and will provide an opportunity to be heard for those who were not able to attend one of the 13 public hearings that the IJC conducted in upper Great Lakes communities during July 2012. The deadline for comments has also been extended to September 30, 2012.

The Study examines whether the regulation of outflows from Lake Superior through the compensating works and power dams on the St. Marys River at Sault Ste. Marie might be improved to take into consideration the evolving needs of users on Lakes Superior, Huron, Michigan and Erie. The Commission is considering proposed changes to its Orders of Approval for the outflows of Lake Superior at the St. Marys River that have been recommended by the Study. The Study report also examines the potential future impacts of climate change, a management strategy to better anticipate and respond to future extreme water levels, the feasibility and implications of restoring water levels in lakes Michigan-Huron and multi-lake regulation and its impacts throughout the Great Lakes-St. Lawrence system. The study report and a presentation on the study findings, as well as the *supporting documents* and *peer review* are available online at the following Web site: *http://www.iugls.org.*

Participants may join the teleconference on either of the following lines and are encouraged to dial in 10 minutes before the 7 p.m. (EDT) start time:

- English speaking line: Telephone 877–413–4814, PIN 7297456
- French speaking line: Telephone 877–413–4814, PIN 2641187

Written comments may also be submitted to the IJC for receipt by September 30, 2012 via the *Upper Great Lakes Public Hearings* Web site *http://www.ijc.org/iuglsreport/* or to either address below:

U.S. Section Secretary, International Joint Commission, 2000 L Street NW., Suite 615, Washington, DC 20440, Fax: 202–632–2006, *commission@washington.ijc.org.*

Canadian Section Secretary, International Joint Commission, 234 Laurier Avenue West, 22nd Floor, Ottawa, ON K1P 6K6, Fax: 613–993–5583, *commission@ottawa.ijc.org.*

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include considering applications for projects that affect the natural levels and flows of boundary waters. For more information, visit the Commission's Web site at *www.ijc.org.*

Dated: September 13, 2012.

Charles A. Lawson,

Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. 2012–23116 Filed 9–18–12; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

[Public Notice 8033]

In the Matter of the Designation of the Haqqani Network Also Known as HQN as a Specially Designated Global Terrorist Pursuant to Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as the Haqqani Network, also known as HQN, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: September 7, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–23124 Filed 9–18–12; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (the AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for calendar year 2013 for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor in the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under the AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of the AGOA and those that were ineligible for such benefits in 2012.

DATES: To ensure consideration, public comments must be submitted to the Office of the U.S. Trade Representative (USTR) by October 12, 2012.

ADDRESSES: USTR strongly prefers electronic submissions made at *http://www.regulations.gov,* docket number USTR–2012–0026 See ''Requirements for Submission,'' below. If you are unable to make a submission at *www.regulations.gov,* please contact Don Eiss, Trade Policy Staff Committee, at (202) 395–3475 to make other arrangements.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Don Eiss, Office of the U.S. Trade Representative, 600 17th Street NW., Room F516, Washington, DC 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA for countries meeting certain statutory requirements intended to prevent unlawful transshipment of such articles, if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA (19 U.S.C. 3703); and (2) section 502 of the 1974 Act (19 U.S.C. 2462).

Section 104 of the AGOA includes requirements that the country has established or is making substantial progress toward establishing, *inter alia:* A market-based economy; the rule of law, political pluralism, and the right to due process; the elimination of barriers to U.S. trade and investment; economic policies to reduce poverty; a system to combat corruption and bribery; and protection of internationally recognized worker rights. In addition, the country may not engage in activities that undermine U.S. national security or foreign policy interests or engage in gross violations of internationally recognized human rights. Please see section 104 of the AGOA and section 502 of the 1974 Act for a complete list of the AGOA eligibility criteria.

Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country. For 2012, 40 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the countries currently designated as ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor and review annually the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act. The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2012:

Angola

Republic of Benin
Republic of Botswana
Burkina Faso
Burundi
Republic of Cape Verde
Republic of Cameroon
Republic of Chad
Federal Islamic Republic of Comoros
Republic of Congo
Republic of Cote d'Ivoire
Republic of Djibouti
Ethiopia
Gabonese Republic
The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Liberia
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Sao Tome & Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Togo
Republic of Uganda
Republic of Zambia

The following sub-Saharan African countries that were not designated as beneficiary sub-Saharan African countries in 2012 that are up for review are:

Central African Republic
Democratic Republic of Congo
Republic of Equatorial Guinea
State of Eritrea
Republic of Madagascar
Somalia
Republic of South Sudan
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: Comments must be submitted in English. To ensure the most timely and expeditious receipt and consideration of petitions, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit petitions via this site, enter docket number USTR–2012–0026 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''Document Type'' on search-results page and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations,gov* Web site, please consult the resources provided on the Web site by clicking on ''Help'' at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''Type Comment'' field, or by attaching a document. USTR prefers comments to be submitted as attachments. When doing this, it is sufficient to type ''See attached'' in the ''Type Comment'' field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (pdf) are preferred.

Persons wishing to file comments containing business confidential information must submit both a business confidential version and a public version. Persons submitting business confidential information should write ''See attached BC comments'' in the ''Type Comment'' field. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Persons submitting a business confidential comment must also submit a separate public version of that comment with the business confidential information deleted. Persons should write ''See attached public version'' in the ''Type Comment'' field of the public submission. Submissions should not attach separate cover letters; rather, information that might appear in the cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

Public versions of all documents relating to this review will be available for review no later than two weeks after the due date at *www.regulations.gov,* docket number USTR–2012–0026.

William Shpiece,

Acting Chair, Trade Policy Staff Committee.

[FR Doc. 2012–23144 Filed 9–18–12; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operating Requirements: Commuter and On Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 9, 2012, vol. 77, no. 131, page 40404. 14 CFR part 135 prescribes requirement for Air Carrier/Commercial Operators. The info collected shows compliance and applicant eligibility.

DATES: Written comments should be submitted by October 19, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0039.

Title: Operating Requirements: Commuter and On Demand Operations.

Form Numbers: FAA form 8070–1.

Type of Review: Renewal of an information collection.

Background: Title 49 U.S.C., Section 44702 authorizes issuance of air carrier operating certificates. 14 CFR part 135 prescribes requirement for Air Carrier/Commercial Operators. Each operator which seeks to obtain, or is in possession of, an air carrier or FAA operating certificate must comply with the requirements of 14 CFR part 135 in order to maintain data which is used to determine if the carrier is operating in accordance with minimum safety standards. Air carrier and commercial operator certification is completed in accordance with 14 CFR part 119. Part 135 contains operations and maintenance requirements.

Respondents: 2,426 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 7.7 minutes.

Estimated Total Annual Burden: 1,154,674 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102,

725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

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

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–22997 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: FAA Acquisition Management System (FAAAMS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 9, 2012, vol. 77, no. 131, page 40403. The FAA Acquisition Management System establishes policies and internal procedures for FAA acquisition. The information collection is necessary to solicit, award, and administer contracts for supplies, equipment, services, facilities, and real property to fulfill FAA's mission.

DATES: Written comments should be submitted by October 19, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0595.

Title: FAA Acquisition Management System (FAAAMS).

Form Numbers: 85 forms available at *http://fast.faa.gov/ProcurementToolboxForms.cfm.*

Type of Review: Renewal of an information collection.

Background: Section 348 of Public Law 104–50 directed FAA to establish an acquisition system. The information collection is carried out as an integral part of FAA's acquisition process. Various portions of the AMS describe information needed from vendors seeking or already doing business with FAA. FAA contracting offices collect the information to plan, solicit, award, administer and close individual contracts. The FAA small business office collects information to promote and increase small business participation in FAA contracts.

Respondents: Approximately 15,298 vendors.

Frequency: Data is collected on occasion.

Estimated Average Burden per Response: 7.5 hours.

Estimated Total Annual Burden: 2,000,719 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 13, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–22996 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Changes in Permissible Stage 2 Airplane Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 9, 2012, vol. 77, no. 131, page 40405. This information is used to issue special flight authorizations for non-revenue transports and non-transport jet operations of Stage 2 airplanes at U.S. airports. A minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is one enumerated by law.

DATES: Written comments should be submitted by October 19, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0652.

Title: Changes in Permissible Stage 2 Airplane Operations.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: This collection is required under the Airport Noise and Capacity Act of 1990 (as amended by Pub. L. 106–113) and the FAA Modernization and Reform Act of 2012. The information is used by the FAA to issue special flight authorizations for nonrevenue operations of transports and non-transport jet Stage 2 airplanes at U.S. airports. A minimal amount of data is requested to identify the affected

parties and determine whether the purpose for the flight is enumerated in the law.

Respondents: 50 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 12.5 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on September 13, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–22994 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2009–1144]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of receipt of application: Commencement of public review and comment period; notice of public meeting.

SUMMARY: The Federal Aviation Administration (FAA) received the final application from the Puerto Rico Ports Authority and Puerto Rico Public-Private Partnerships Authority for the participation of Luis Muñoz Marín International Airport, San Juan, Puerto Rico (SJU) in the Airport Privatization Pilot Program and has determined that the final application is substantially complete and accepted for review. The FAA is seeking information and comments from interested parties on the final application. In furtherance of this effort, the Department of Transportation (DOT), the Federal Aviation Administration and the Transportation Security Administration will conduct a public meeting on Friday, September 28, 2012, in San Juan, Puerto Rico.

Title 49 U.S.C. Section 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirement for up to five airport privatization projects. The FAA Modernization and Reform Act of 2012 expanded the pilot program from five to ten airports. The application procedures require the FAA to publish a notice of receipt of the final application in the **Federal Register** and accept public comment on the final application for a period of 60 days.

DATES: Comments must be received by November 19, 2012. Comments that are received after that date will be considered only to the extent possible.

Comments Invited

On Friday, September 28, 2012, beginning at 8 a.m., the Department of Transportation, Federal Aviation Administration will conduct a public meeting to receive oral comments about the Luis Muñoz Marín International Airport final application; the Transportation Security Administration will also participate.

ADDRESSES: The meeting will be held at: Verdanza Hotel, 8020 Tartak Street, Isla Verde, Puerto Rico 00979, 1–787–253–9000.

The purpose of the public meeting is to receive comments from airport users and employees, airlines, aviation businesses and airport tenants, elected officials and community residents about the concerns, advantages or disadvantages of transferring the airport to a private operator. The Federal panel will begin accepting comments at:

Schedule	Group category
0800–0900	Airport Officials
0900–1000	Government Officials
1000–1100	Airport Employees
1100–1200	Airport Businesses
1:30 p.m.–3 p.m	General Aviation
3 p.m.–5 p.m	General Public

Individuals wishing to address the Federal panel are limited to a five minute presentation. Those individuals needing more time can put their additional comments in writing and submit to the FAA the day of the listening session or submit at a later time to the below named addresses.

Advance Registration

Individuals wanting to address the Federal panel are strongly encouraged to pre-register by emailing their name, affiliation and applicable group category to *LMN-publicmeeting@faa.gov.* Advance registration will close Wednesday, September 26 at 5.p.m.

On-Site Registration

On-site registration will begin 7:30 a.m. and close at 12 noon. All testimony will be completed no later than 6 p.m.

Comments

You may also send written comments by any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically. Docket Number: FAA 2009–1144.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington DC 20590–0001.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251

Identify all transmission with ''Docket Number FAA 2009–1144'' at the beginning of the document.

Examining the Application

The final application has been filed under Docket Number FAA–2009–1144. You may examine the final application on the Internet at: *http://www.regulations.gov* or on the FAA's Web site *www.faa.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays. The Docket Operations Office (800–647–5527) is located at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington DC 20590–0001. The Docket contains the preliminary and final application, the agreements, any comments received and other information. The Puerto Rico Ports Authority (PRPA) has also made copies of the final application available at the following location:

English Translation

Puerto Rico Department of State, One-Stop Service Center, Corner of San José Street and San Francisco Street, Diputacion Provincial Building, Old San Juan, Puerto Rico.

Spanish Translation

Department de Estado de Puerto Rico, Centro Único de Servicio, Edificio Diputación Provincial, Viejo San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Carlee Cellar, Airport Compliance Specialist, Airport Compliance Division, ACO–100, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591. Telephone 202–267–3187.

SUPPLEMENTARY INFORMATION: Title 49 of the U.S. Code 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirements to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (Notice *of final application procedures for the Airport Privatization Pilot program: Application Procedures,* 62 **Federal Register** 48693–48708 (September 16, 1997) (Notice) (as modified, 62 FR 63211, Nov. 26, 1997). A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the Federal Aviation Administration.

The Puerto Rico Ports Authority and Puerto Rico Public-Private Partnerships Authority submitted a preliminary application to the Airport Privatization Pilot Program for Luis Muñoz Marín International Airport on December 1, 2009, the filing date of the preliminary application. On December 22, 2009, the Federal Aviation Administration advised the Puerto Rico Ports Authority and Puerto Rico Public-Private Partnerships Authority that the agency accepted the application for review and that they may select a private operator, negotiate an agreement and submit a final application. The preliminary application is posted on *http://www.regulations.gov* in Docket Number FAA 2009–1144 and is available for public review.

On September 10, 2012, the Puerto Rico Ports Authority and Puerto Rico Public-Private Partnerships Authority filed its final application. The Puerto Rico Ports Authority and Puerto Rico Public-Private Partnerships Authority selected Aerostar Airport Holdings, LLC, (AEROSTAR) to operate the Airport under a 40-year lease. The Puerto Rico Ports Authority will receive $615 million upon signing the lease and annual revenue payments over the life of the lease. In the final application, the Puerto Rico Ports Authority requested an exemption under 49 U.S.C. 47134(b)(1) to permit the Puerto Rico Ports Authority to use revenue from the lease of airport property for non-airport purposes and under 49 U.S.C. 47134(b)(2) to forego the repayment of Federal grants; and AEROSTAR asked for an exemption under 49 U.S.C. 47134(b)(3) to permit them to earn compensation from the operation of the airport.

The purpose of the public meeting scheduled for September 28, 2012, is to accept oral comments on the Luis Muñoz Marín International Airport final application, for inclusion in Docket Number FAA 2009–1144. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket posted on *http://www.regulations.gov*. The Federal panel will not be able to discuss the application or the pending agency decision because the final application is presently before the agency for a decision. Spanish/English translation will be made available at the meeting. Sign and oral interpretation can be made available at the meeting, if requested 10 calendar days before the meeting.

As part of its review of the final application, the FAA will consider all comments, written and oral, that are submitted by interested parties during the 60-day comment period for this notice.

Issued in Washington, DC, on September 11, 2012.

Randall Fiertz,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2012–22980 Filed 9–17–12; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting: RTCA Special Committee 226, Audio Systems and Equipment

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

ACTION: Meeting notice of RTCA Special Committee 226, Audio Systems and Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the fourth meeting of the RTCA Special Committee 226, Audio Systems and Equipment.

DATES: The meeting will be held October 16–18, 2012 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 226. The agenda will include the following:

- Welcome and Administrative Remarks
- Introductions
- Agenda Overview
- Review previous action items
- Solicit proposals for further changes to DO–214
- Initiate discussion on TSO–C99A (Oxygen Mask Communication)
- Continue discussion on the following:
  - Risks of usage of adaptive technology during test
  - Proposed committee letter to invite additional headsets, MIC's and CVR manufacturers
  - Addition of noise test requirement to the vibration test variable nature of Oxygen Mask
  - Microphone and Hand Microphone performance in the marketplace
  - Review of proposal to remove CVR Area Microphone requirements from standard in lieu of ED–112

- Discussion on ANR white paper
- Sensitivity versus output power as they correlate with its specified ratings
- Continue review of DO–214 and draft updates/changes
- Draft language for noise test requirement to combine with the vibration test
- Other Business
- Establish agenda for next meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 11, 2012.

David Sicard,

Manager, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2012–22992 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

31st Meeting: RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services

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

ACTION: Meeting notice of RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

SUMMARY: The FAA is issuing this notice to advise the public of the thirty-first meeting of the RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

DATES: The meeting will be held October 22–26, 2012 from 8:30 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 206. The agenda will include the following:

Monday, October 22

9 a.m. Opening Plenary

- Chairmen's remarks and host's comments
- Attendees' Introductions
- Approval of previous meeting minutes
- Review and approve meeting agenda
- Action item review
- Sub-Group (SG1—Wake OSED, SG3—Architecture, SG4—DO–252 revision, SG5/6—MOPS/MAPS) status and week's plan
- Industry Presentations:
  - VDB Data Link
  - System Architecture(s)
  - AAtS Implementation Guidance Document
  - New Capabilities in Flight Services

1 p.m. Opening Plenary (continue after lunch)

- FAA Presentations:
- Category 1 End-to-End Performance Metrics paper
- Human Factors Product Evaluation paper
- Data Link Services Quality Sampling paper
- Product Compendium
- DQR Working paper

3:45 p.m. SG1/3, SG4, SG5, and SG6 meetings

October 23–25: Tuesday–Thursday

8:30 a.m. SG1/3, SG4, SG5, and SG6 meetings

26 October 23—Friday

8:30 a.m. Closing Plenary

- Sub-Group reports (SG1/3, 4, 5 & 6)
- Industry Presentations:
- ARINC Project Papers 830/839
- RTCA SC–223 AeroMACS
- Industry Coordination
- Action item review
- Future meeting plans and dates
- Other business
- 1 p.m. Adjourn (no lunch break)

Welcome and Administrative Remarks

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

David Sicard,

Manager, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2012–23113 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–36]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 9, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0707 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or

signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or: Frances Shaver, ARM–207, (202) 267–4059, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 7, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–0707.

Petitioner: L–3 Communications Integrated Systems, L.P. Sections of 14 CFR Affected: §§ 25.785(h)(2), 25.785(j), 25.791(a), 25.795, 25.813(e), 25.815, and 25.853(d)

Description of Relief Sought: Relief from the requirements of flight-attendant direct view, firm handholds in the passenger compartment, no-smoking placards, security considerations, interior doors between passenger compartments (some electrically powered), aisle width, and maximum heat-release and smoke-emissions flammability requirements for large interior panels, for executive interiors on Boeing Model 747–8 airplanes designated for private use.

[FR Doc. 2012–23100 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0068]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 18, 2012, Housatonic Railroad Company, Inc. (HRRC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2012–0068.

In its petition, HRRC seeks relief from 49 U.S.C. 21103(a)(4), which (in part) requires a train employee to receive 48 hours off duty after initiating an on-duty period for 6 consecutive days. Specifically, HRRC seeks a waiver to allow a train employee to initiate an on-duty period for 6 consecutive days followed by 24 hours off duty. In support of the request, HRRC submitted documents demonstrating employee support and a description of employee work schedules.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

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

Communications received by November 5, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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

Issued in Washington, DC, on September 12, 2012.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2012–23114 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2001–10948]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 23, 2012, Central Montana Rail, Inc. (CMR) has petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from a provision of the Federal hours of service laws contained at 49 U.S.C. 21103(a), as provided by 49 U.S.C. 21102(b). FRA assigned the petition Docket Number FRA–2001–10948.

In their petition, CMR seeks relief from 49 U.S.C. 21103(a)(2), which prohibits a train employee from remaining or going on duty for a period in excess of 12 consecutive hours. Title 49 U.S.C. 21102(b) allows railroads with 15 or fewer employees to petition for exemption from the restriction outlined at 49 U.S.C. 21103(a)(2), but the exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period. In support of its request, CMR explained that the allowance for train crews to accumulate up to 16 hours of time on duty has not impacted safety negatively, and that this allowance is only used occasionally.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 5, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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

Issued in Washington, DC, on September 12, 2012.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2012–23122 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0094]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DEFIANCE; Invitation for Public Comments.

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 19, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0094. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DEFIANCE is:

Intended Commercial Use of Vessel: ''Charter on the US East Coast & Bahamas.''

Geographic Region: ''Florida, South Carolina, Maryland, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.''

The complete application is given in DOT docket MARAD–2012–0094 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: September 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–23108 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0093]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel RIVA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 19, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0093. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RIVA is:

Intended Commercial Use of Vessel: ''Daysailing.''

Geographic Region: Hawaii.

The complete application is given in DOT docket MARAD–2012–0093 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: September 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–23109 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0095]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ISLAND WATERS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 19, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0095. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ISLAND WATERS is:

Intended Commercial Use of Vessel: ''Charter to individuals in coastal waters.''

Geographic Region: California, Oregon, and Washington. The complete application is given in DOT docket MARAD–2012–0095 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: September 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–23111 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Actions on Special Permit Applications

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

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on special permits applications in (August to August 2012). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on September 10, 2012.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		Modification Special Permit Granted	
14298–M	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 180.209(a) and (b)	To modify the special permit to authorize an additional Division 2.1 hazardous material, to increase maximum acceptance flaw size used on UE requalification and other miscellaneous revisions.
12516–M	Poly-Coat Systems, Inc., Liverpool, TX.	49 CFR 107.503(b)(c); 172.102(c)(3) B15 and 823; 173.241; 173.242; 178.345–1; –2; –3; –4; –7; –14; –15; 178.347–1; –2; 178.348–1; 178.348–2; 180.405; 180.413(d).	To modify the special permit that authorizes the manufacture, mark, sale and use of non-DOT specification cargo tanks constructed of fiberglass reinforced plastic by increasing the volumetric capacity.
		New Special Permit Granted	
15610–N	WavesinSolids LLC, State College, PA.	49 CFR 180.209, 180.209(a), 180.205(c)(f)(g) (i), 173.302a (b)(2)(3)(4)(5), 180.213, 180.519(a), 180.519(b)(c).	To authorize the transportation in commerce of certain gases in DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders. The cylinders (tubes) are retested by acoustic emission and ultrasonic examination (AE/UE) described in paragraph 7 below in place of the internal visual inspection and the hydrostatic retest required in § 180.205. (modes 1, 2, 3)
15568–N	ATK Launch Systems Corinne, UT.	49 CFR 172.101(b)	To authorize the transportation in commerce soils containing solid explosive compounds (not greater than 3%) in bulk. (mode 1)
15577–N	Olin Corporation Oxford, MS	49 CFR 172.101 column 8, 173.62(b), 173.60(b)(8), 172.300(d).	To authorize the tansportation in commerce of certain Division 1.4 in non-DOT specification packagings without labels and markings to a distance not to exceed 200 yards by motor vehicle, subject to the limitations and special requirements specified herein. (modes 1, 2)
15623–N	Ledwell & Son Enterprises, Inc., Texarkana, TX.	49 CFR 173.202, 173.203, 173.241, 173.242.	To authorize the manufacture, marking, sale and use of multiple non-DOT specification containers, manifolded together within a frame and securely mounted on a truck chassis, for the transportation in commerce of the materials authorized by this special permit. (mode 1)
15654–N	T. SCOTT DUNN CONSTRUCTION, INC. DBA, Heli-Dunn, Phoenix, OR.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 172.200, 172.300, Part 173, 175.30(a) (1) and 175.75.	To authorize the transportation in commerce of certain hazardous materials by cargo only aircraft and 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15636–N	Ward Air, Inc., Juneau, AK	49 CFR 172.101 Column (9B)	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4)
15631–N	Atlas Air, Inc. Miami, FL	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2)(3).	To authorize the transportation in commerce of Division 1.1 explosives, which are forbidden, by cargo-only aircraft. (mode 4)
		Emergency Special Permit Granted	
15647–N	Thunderbird Cylinder, Inc., Phoenix, AZ.	49 CFR 179.7 and 180.505	To authorize retesting of certain DOT Specification and non-DOT Specification multi unit tank car tanks. (modes 1, 2).
15637–N	Textron Inc., Wilmington, MA	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2)(3).	To authorize the transportation in commerce of Division 1.1 explosives, which are forbidden, by cargo-only aircraft. (mode 4)
15664–N	Pollux Aviation Ltd., Wasilla, AK.	49 CFR 172.101 Column (9B); 175.30(a)(1).	To authorize the transportation in commerce of liquefied petroleum gas in amounts that exceed the quantity limitations for transportation by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft only in the State of Alaska. (mode 4)

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
15677–N	Arkema, Inc., King of Prussia, PA.	49 CFR 173.304(b)	To authorize the transportation in PA commerce of DOT Specification 39 thirty pound cylinders by highway, which have the potential to react during transportation. (mode 1)
15689–N	AVL Test Systems Inc., Plymouth, MI.	49 CFR 172.200, 177.834	To authorize the discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. (mode 1)
15685–N	National Air Cargo Group, Inc. dba, National Airlines, Ypsilanti, MI.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30.	To authorize the transportation in commerce by cargo only aircraft of Class 1 explosives which are forbidden or exceed quantities presently authorized. (mode 4)
15696–N	Lantis Fireworks and Lasers, Draper, UT.	49 CFR 172.300, 172.400 and 173.56.	To authorize the one-time, one-way transportation in commerce of 2142 kg of unapproved fireworks from Carson, CA to the Lantis Fireworks & Lasers facility in Fairfield, UT for destruction by motor vehicle. (mode 1)
Emergency Special Permit Withdrawn			
15670–N	Volga-Dnepr Airlines, Ulyanovsk.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27, and 175.30(a)(1).	To authorize the one-time transportation in commerce of certain Division 1.2 explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
15682–N	Kalitta Air, LLC, Ypsilanti, MI ..	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1).	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft.
Denied			
15080–N	Request by Alaska Airlines Seattle, WA August 27, 2012. To authorize the transportation in commerce of cylinders containing oxidizing gases without rigid outer packagings without outer packaging capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test when no other practical means of transportation exist.		
Denied			
10964–M	Request by Kidde Aerospace & Defense Wilson, NC August 1, 2012. To modify the permit to authorize a rework procedure to allow fire extinguishers which were "steel stamped" to be returned to within original specifications.		

[FR Doc. 2012–22783 Filed 9–18–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

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

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 19, 2012.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 06, 2012.

Donald Burger,

Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permit thereof
15681–N	.....	Micronesian Aviation Corporation dba Americopters, Saipan, MP.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2); 175.30(a)(1); 172.200; 172.301(c); 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4)

NEW SPECIAL PERMITS—Continued

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permit thereof
15690–N		Duke Energy Corp. Charlotte, NC.	49 CFR 171.8; 172.300; 172.400; 172.500; 173.6; 177.817; Part 178.	To authorize the transportation in commerce of test kits containing minor amounts of alkali metal dispersed in mineral oil. (mode 1)
15693–N		Croman Corporation, White City, OR.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2); 175.30(a)(1); 172.200; 172.301(c); 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, without meeting certain hazard communication and stowage requirements. (mode 4)
15698–N		Timberline Helicopters, Inc., Sandpoint, ID.	49 CFR 172.101 Column (9B); 172.204(c)(3); 173.27(b)(2); 175.30(a)(1); 172.200; 172.301(c); 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4)
15699–N		Flight Express Incorporated, Orlando, FL.	49 CFR 172.203(a); 175.700(b)(2)(ii); 75.702(b).	To authorize the transportation in commerce of radioactive material on cargo only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met. (modes 4, 5)
15706–N		Viking Packing Specialist, Collinsville, OK.	49 CFR 106, 107, 171–180; 173.13(a); 173.13(b); 173.13(c)(1)(ii); 173.13(c)(1)(iv); 173.13(c)(2)(iii).	To authorize the manufacture, mark and sale of specially designed combination type packaging for transporting certain hazardous materials in limited quantities without required labelling and placarding. (modes 1, 2, 4, 5)
15707–N		Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.240; 173.242; 176.83.	To authorize the transportation in commerce of a gas purification apparatus containing bulk quantities of certain Division 4.2 (spontaneously combustible) solids in non-DOT specification stainless steel pressure vessels. (modes 1, 2, 3)
15709–N		Praxair Distribution, Inc., Danbury, CT.	49 CFR 173.23(a)(4); 173.23(a)(5).	To authorize the transportation in commerce of foreign manufactured cylinders that are not equipped with pressure relief devices. (mode 3)

[FR Doc. 2012–22782 Filed 9–18–12; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

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

ACTION: List of Applications for Modification of Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before October 4, 2012.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 10, 2012

Donald Burger,

Chief, General Approval and Permits.

MODIFICATION SPECIAL PERMITS

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permit thereof
11470–M		Veolia ES Technical Solutions, L.L.C., Flanders, NJ.	49 CFR 172.301(a)(2)	To modify the special permit to authorize revising the marking requirements.
12396–M		National Aeronautics & Space Administration, Washington, DC.	49 CFR 173.34(d); 173.302(a); 175.3.	To modify the special permit to authorize rail freight, cargo vessel, and passenger aircraft as additional modes of operation.
13998–M		3AL Testing Corp., Centennial, CO.	49 CFR 172.203(a); 172.302a(b)(2), (4)(5); 180.205(f)(g); 180.209(a), (b)(1)(iv).	To modify the special permit to authorize the ultrasonic examination of ISO 9809–2 cylinders, and the removal of Gulf Coast Hydrostatic Tests as an agent.
14227–M		Aluminum Tank Industries, Inc., Winter Haven, FL.	49 CFR 177.834(h), 178.700	To modify the special permit to authorize pumps and hoses attached to discharge outlets during transportation if certain requirements are met.
14562–M		The Lite Cylinder Company, Franklin, TN.	49 CFR 173.304a(a)(1)	To modify the special permit to authorize the maximum service pressure be raised to 400 psi, for nonflammable refrigerant gases only, for their smallest unit.
14656–M		PurePak Technology Corporation, Chandler, AZ.	49 CFR 173.158(f)(3)	To modify the special permit to authorize a 2.6 liter capacity square plastic bottle and to allow use of a 500 ml round plastic bottle.
14808–M		Amtro Alfa Metalomecanica SA, Portugal.	49 CFR 178.51(b), (f)(1) and (2) and (g).	To modify the special permit to authorize an additional 2.1 material.
15468–M		Prism Helicopters Inc., Wasilla, AK.	49 CFR 172.101 Column (9B).	To modify the special permit to authorize the transportation beyond the state of Alaska.

[FR Doc. 2012–22781 Filed 9–18–12; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

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

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on September 10, 2012.

Donald Burger,
Chief, General Approval and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
14372–M	Kidde Aerospace and Defense, Wilson, NC	3	10–31–2012
New Special Permit Applications			
15334–N	Floating Pipeline Company Incorporated, Halifax, Nova Scotia	3	09–30–2012
15558–N	3M Company St. Paul, MN	4	10–31–2012
15569–N	Vexxel Composites, LLC, Brigham City, UT	4	09–30–2012
15669–N	U.S. Department of Defense, Scott Air Force Base, IL	4	09–30–2012
15552–N	POLY–COAT SYSTEMS, INC. Liverpool, TX	4	10–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
	Party to Special Permits Application		
14372–P	L'Hotellier France	3	10–31–2012
13548–P	Interstate Battery System of The Redwoods Eureka, CA	4	10–31–2012

[FR Doc. 2012–22780 Filed 9–18–12; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6 (Sub-No. 485X)]

BNSF Railway Company—Abandonment Exemption—in McKinley County, N.M.

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 5.11 miles of rail line located between milepost 14.50 and milepost 19.61, north of Defiance, in McKinley County, N.M. (the Line). The Line traverses United States Postal Service Zip Code 87319.

BNSF has certified that: (1) No local traffic has moved over the line for at least two years; (2) no overhead traffic has moved over the line for at least two years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on October 19, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 1, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 9, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth St. NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) on September 24, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1 (800) 877–3339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by filing of a notice of consummation by September 19, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: September 14, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–23104 Filed 9–18–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing and Related Servs.—2012 Update,* EP 542 (Sub-No. 20) (STB served July 27, 2012).

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0600; FRL–9709–9]

RIN 2060–AQ60

National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review conducted for the following source categories regulated under two national emission standards for hazardous air pollutants (NESHAP): hard and decorative chromium electroplating and chromium anodizing tanks, and steel pickling—HCl process facilities and hydrochloric acid regeneration plants. On October 21, 2010, EPA proposed amendments to these NESHAP under section 112(d)(6) and (f)(2) of the Clean Air Act. On February 8, 2012, EPA published a supplemental proposal with new analyses and results. For hard and decorative chromium electroplating and chromium anodizing tanks these final amendments addressing Clean Air Act (CAA) sections 112(d)(6) and (f)(2) include revisions to the emissions limits for total chromium; addition of housekeeping requirements to minimize fugitive emissions; and a requirement to phase-out the use of perfluorooctane sulfonic acid (PFOS) based fume suppressants. These requirements will provide greater protection for public health and the environment by reducing emissions of hexavalent chromium (a known human carcinogen). In addition, as part of the October 2010 proposal, we proposed certain actions pursuant to CAA section 112(d)(2) and (3) for hard and decorative chromium electroplating and chromium anodizing tanks. For these sources, we are modifying and adding testing and monitoring, recordkeeping, and reporting requirements; and revisions to the regulatory provisions related to emissions during periods of malfunction. For steel pickling hydrochloric acid regeneration plants, we are finalizing our proposal to remove the alternative compliance method because we believe it is inconsistent with the requirements of CAA section 112(d)(2) and (3). This amendment will achieve reductions in chlorine emissions. Additionally, we are adding provisions to the Steel Pickling Facilities NESHAP requiring that the emission limits of the rule apply at all times, including during periods of startup, shutdown and malfunction.

DATES: This final action is effective on September 19, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0600. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA West Building, Room Number 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final rule, contact Mr. Phil Mulrine, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5289; fax number: (919) 541–3207; and email address: *mulrine.phil@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Mark Morris, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5416; fax number: (919) 541–0840; and email address: *morris.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: For information about the applicability of these NESHAP to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS ACTION

NESHAP for:	OECA Contact [a]	OAQPS Contact [b]
Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.	Sara Ayres, (202) 564–5391, *ayres.sara@epa.gov.*	Phil Mulrine, (919) 541–5289, *mulrine.phil@epa.gov.*

[a] EPA's Office of Enforcement and Compliance Assurance.
[b] EPA's Office of Air Quality Planning and Standards.

Organization of this Document. The information in this preamble is organized as follows:

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I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

This action presents the results and final decisions based on EPA's review of two national regulations for hazardous air pollutants. Specifically, pursuant to the Clean Air Act (CAA), EPA has completed risk and technology reviews (RTRs) for four source categories covered by two separate regulations.

Section 112(d)(6) of the CAA requires EPA to review these regulations (i.e., national emissions standards) and revise them as necessary (taking into account developments in practices, processes, and control technologies) no less frequently than every 8 years. Section 112(f)(2) of the CAA requires EPA to assess the remaining risks due to emissions of hazardous air pollutants (HAP) from these source categories and determine whether the emissions standards provide an ample margin of safety to protect public health within 8 years of promulgation of the original standards. The two regulations addressed in this action are the following: National Emissions Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and National Emissions Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

In addition to the reviews described above, the EPA also reviewed these rules to determine if any other corrections or clarifications were needed pursuant to other Sections the Clean Air Act. As described below, based on all these reviews, the EPA has determined it is appropriate and necessary to promulgate some amendments to these rules.

2. Summary of the Major Provisions of the Regulatory Actions

With regard to the National Emissions Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, based on the reviews under Sections 112(d)(6) and 112(f), the EPA has determined it is appropriate to promulgate emissions limits and surface tension limits that are moderately lower than the limits in the current regulation for new and existing hard chromium electroplating, decorative chromium electroplating, and chromium anodizing sources. These amendments will reduce chromium emissions (a known human carcinogen) and the risk associated with those emissions. This action also includes housekeeping requirements to minimize fugitive emissions from affected sources. In addition, this action eliminates the use of fume suppressants that contain perfluorooctane sulfonic acid (PFOS), which has been shown to be persistent, bioaccumulative and toxic. Finally, this action amends the requirements for testing, monitoring, reporting, and recordkeeping for consistency with the other requirements of the NESHAP.

With regard to the National Emissions Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants, the Agency has determined that no amendments are needed based on the risk and technology reviews under Sections 112(d)(6) and 112(f) of the CAA. However, EPA identified two areas where amendments were needed to ensure the rules were meeting requirements of Sections 112(d)(2) and 112(d)(3). First, this action eliminates an alternative compliance option that was inconsistent with the requirements of CAA section 112(d)(2) and (3). Secondly, we are adding provisions to require the emission limits of the rule to apply at all times, including during periods of startup, shutdown and malfunction.

3. Costs and Emissions Reductions

Table 2 summarizes the costs and emissions reductions for this action. See section V of this preamble for further discussion of the costs and impacts.

TABLE 2—SUMMARY OF THE ESTIMATED COSTS AND EMISSIONS REDUCTIONS FOR THE FINAL CHROMIUM ELECTROPLATING NESHAP AND FINAL STEEL PICKLING NESHAP AMENDMENTS

Source category	Number of affected plants	Capital costs $	Annualized costs $/yr	Emissions reductions lbs/yr
Chromium Electroplating NESHAP				
Large hard chromium electroplating	57	$6,377,000	$1,686,000	148
Small hard chromium electroplating	91	1,424,000	476,000	33
Decorative chromium electroplating	313	163,000	166,000	35
Chromium anodizing	74	235,000	51,000	8
Total	535	8,200,000	2,380,000	224
Steel Pickling NESHAP				
Hydrochloric acid regeneration facilities	1	100,000–200,000	11,419–22,837	30,000

B. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 3 of this preamble.

Table 3 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP.

If you have any questions regarding the applicability of any aspect of these NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 3—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and Source Category		NAICS Code [1]	MACT Code [2]
Chromium Electroplating NESHAP, Subpart N	Chromium Anodizing Tanks	332813	1607
	Decorative Chromium Electroplating	332813	1610
	Hard Chromium Electroplating	332813	1615
Steel Pickling—HCl Process Facilities And Hydrochloric Acid Regeneration Plants NESHAP, Subpart CCC		3311, 3312	0310

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

C. 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 final action will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

D. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by November 19, 2012. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

II. Background Information

A. Overview of the Chromium Electroplating and Chromium Anodizing Source Categories

The 1995 Chromium Electroplating NESHAP regulate emissions of chromium compounds from three source categories: Hard chromium electroplating, decorative chromium electroplating, and chromium anodizing. The NESHAP apply to both major sources and area sources. The NESHAP were promulgated on January 25, 1995, (60 FR 4963) and codified at 40 CFR part 63, subpart N. We amended the NESHAP to address issues related to changes in control technology, monitoring and implementation on July 19, 2004 (69 FR 42885).

1. Hard Chromium Electroplating

The Hard Chromium Electroplating source category consists of facilities that plate base metals with a relatively thick layer of chromium using an electrolytic process. Hard chromium electroplating provides a finish that is resistant to wear, abrasion, heat, and corrosion. These facilities plate large cylinders and industrial rolls used in construction equipment and printing presses, hydraulic cylinders and rods, zinc die castings, plastic molds, engine components, and marine hardware.

The NESHAP distinguish between large hard chromium electroplating facilities and small hard chromium electroplating facilities. Large hard chromium electroplating facilities are defined as any such facility with a cumulative annual rectifier capacity equal to or greater than 60 million ampere-hours per year (amp-hr/yr). Small hard chromium electroplating facilities are defined as any facility with a cumulative annual rectifier capacity less than 60 million amp-hr/yr. The 1995 NESHAP require all affected tanks located at large hard chromium electroplating facilities to meet an emissions limit of 0.015 milligrams of total chromium per dry standard cubic meter (mg/dscm). Alternatively, large hard chromium facilities also can comply with the NESHAP by maintaining the surface tension in affected tanks equal to or less than 45 dynes per centimeter (dynes/cm), if measured using a stalagmometer, or 35 dynes/cm, if measured using a tensiometer. Compliance with the applicable surface tension limit ensures compliance with the emission limit.

The Chromium Electroplating NESHAP require affected tanks at existing small hard chromium electroplating facilities to meet an emissions limit of 0.030 mg/dscm and affected tanks at new small hard chromium electroplating facilities to meet a limit of 0.015 mg/dscm.

Alternatively, these sources have the option of complying with surface tension limits equal to or less than 45 dynes per centimeter (dynes/cm), if measured using a stalagmometer, or 35 dynes/cm, if measured using a tensiometer. Under the current NESHAP, any small hard chromium electroplating tank for which construction or reconstruction was commenced on or before December 16, 1993 (i.e., the proposal date for the original NESHAP), is subject to the existing source standards, and any small hard chromium electroplating tank constructed or reconstructed after December 16, 1993, is subject to new source standards.

We estimate that there currently are approximately 188 large hard chromium electroplating facilities and 394 small hard chromium electroplating facilities in operation in the U.S. outside of California. Of the 394 small hard chromium electroplating facilities, we estimate that 131 of these facilities have one or more tanks that are subject to the new source standards, and the affected sources at the other 263 facilities are subject to the existing source standards. Additionally, there are about 70 hard chromium electroplating facilities operating in California.

2. Decorative Chromium Electroplating

The Decorative Chromium Electroplating source category consists of facilities that plate base materials such as brass, steel, aluminum, or plastic with layers of copper and nickel, followed by a relatively thin layer of chromium to provide a bright, tarnish- and wear-resistant surface. Decorative chromium electroplating is used for items such as automotive trim, metal furniture, bicycles, hand tools, and plumbing fixtures. We estimate that there currently are approximately 517 decorative chromium electroplating plants in operation in the U.S. The 1995 NESHAP require all existing and new decorative chromium electroplating sources to meet a total chromium emissions limit of 0.01 mg/dscm or meet the surface tension limits of 45 dynes/cm, if measured using a stalagmometer, or 35 dynes/cm, if measured using a tensiometer.

3. Chromium Anodizing

The Chromium Anodizing source category consists of facilities that use chromic acid to form an oxide layer on aluminum to provide resistance to corrosion. The chromium anodizing process is used to coat aircraft parts (such as wings and landing gears) as well as architectural structures that are subject to high stress and corrosive conditions. We estimate that there currently are about 170 chromium anodizing plants in operation in the U.S. The NESHAP require all existing and new chromium anodizing sources to meet a total chromium emissions limit of 0.01 mg/dscm, or meet the surface tension limits of 45 dynes/cm, if measured using a stalagmometer, or 35 dynes/cm, if measured using a tensiometer.

B. Summary of the Proposed Amendments to the Chromium Electroplating and Chromium Anodizing Source Categories

1. The October 2010 Proposal

In 2010, pursuant to section 112(f)(2) of the CAA, we evaluated the residual risk associated with the NESHAP. At that time, we also conducted a technology review, as required by section 112(d)(6). Based on the results of our initial residual risk and technology reviews, we proposed on October 21, 2010 (75 FR 65071), that the risks due to HAP emissions from these source categories were acceptable. The basis for this decision is explained in the October 21, 2010 **Federal Register** Notice. Furthermore, we proposed that no additional controls were necessary to provide an ample margin of safety (AMOS) to protect public health or to prevent an adverse environmental effect because we concluded that the costs of the options analyzed were not reasonable considering the emissions and risk reductions potentially achieved with the controls. Thus, we did not propose to revise the NESHAP under 112(f)(2). However, as explained in that proposal publication, we remained concerned about the potential cancer risks due to emissions from these source categories and asked for additional information and comments on this issue. See 75 FR 65071.

As a result of our technology review in 2010, we proposed the following amendments to the NESHAP for all three source categories:

- Incorporate housekeeping practices into 40 CFR 63.342(f); and,
- Phase out the use of wetting agent fume suppressants (WAFS) that use perfluorooctane sulfonic acid (PFOS);

We proposed the housekeeping practices because they will help reduce and minimize fugitive emissions of chromium compounds from chromium electroplating and anodizing facilities and we had determined at the time of the proposal that they could be implemented at relatively low costs. We proposed to revise the rule to no longer allow the addition of PFOS-based WAFS to tanks as a method to meet the MACT requirements for these source categories. The basis for this proposal is described in the October 2010 **Federal Register** Notice (75 FR 65068). We explained that alternatives to PFOS-based WAFS had been successfully used in the hard and decorative chrome source categories and stated that while alternatives had not been used extensively in chromium anodizing, we were unaware of any technical reason that precluded such use. We specifically solicited comment on this issue.

We also proposed some additional changes in the 2010 proposal under Section 112(d)(2) and (d)(3), including:

- Revise the startup, shutdown, and malfunction (SSM) provisions in the rule;
- Revise the monitoring and testing requirements; and
- Make technical corrections to the NESHAP.

The proposed changes to the SSM provisions will ensure that the standards apply at all times, even during periods of malfunction. Regarding the monitoring and testing requirements, we proposed to revise the compliance provisions for multiple sources controlled by a common add-on air pollution control device, clarify that testing can be performed by either Method 306 or Method 306A, revise Method 306B to clarify that the method also applies to hard chromium electroplating tanks and include procedures for checking the accuracy of, and cleaning of, a stalagmometer (See 75 FR 65095 for a more detailed discussion of the proposed monitoring revisions).

We also proposed to add a provision to provide an affirmative defense against civil penalties for violations of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense, which is the same affirmative defense provision we have proposed or promulgated in several other recent MACT rules.

In our 2010 proposal, we provided further explanation of the basis for proposing these amendments to the NESHAP pursuant to CAA section 112(d)(6). See 75 FR 65093. We proposed that existing sources could not use PFOS-based WAFS 3 years after publication of the final rule in the **Federal Register** and that new sources cannot use PFOS-based WAFS as a method to meet the NESHAP requirements.

2. The February 8, 2012 Supplemental Proposal

In response to the 2010 proposal, several commenters expressed concern that the data set used in the risk assessment was not sufficient and not

representative of the current chromium electroplating industry. Additional data were submitted during the comment period and we also worked with industry and states to gather additional data. Based on the new data, we performed a new risk and technology review for all three source categories.

Our February 2012 supplemental proposal (77 FR 6628) presented the results of the new risk assessment. Based on that assessment, we proposed that risks due to HAP emissions from each of the three chromium electroplating and anodizing source categories were acceptable since the actual and allowable emissions of HAP pose cancer risks below 100-in-1 million, and because a number of the other risk metrics did not indicate high risk concerns. For hard chromium electroplating, we estimated that the maximum individual cancer risk (MIR) was 20-in-1 million based on actual emissions and that about 130,000 people were exposed to risks greater than 1-in-1 million, for decorative chromium electroplating we estimated that the MIR was 10-in-1 million based on actual emissions and that about 43,000 people were exposed to risks greater than 1-in-1 million, and for the chromic acid anodizing source category we estimated that the MIR was 5-in-1 million based on actual emissions and that about 5,000 people were exposed to risks greater than 1-in-1 million. Moreover, the potential risks due to allowable emissions were estimated to be up to 50-in-1 million for hard chromium electroplating, 70-in-1 million for decorative chromium electroplating, and 60-in-1 million for chromic acid anodizing. After proposing that the risks posed by each source category were acceptable, we evaluated potential control options under Section 112(f) for each source category to determine whether additional controls were necessary to provide an ample margin of safety or to prevent an adverse environmental effect. We identified cost-effective controls that would lower emissions and reduce risks. Therefore, in the February 8, 2012, supplemental proposal, we proposed pursuant to CAA section 112(f)(2) to tighten the emissions limits for affected sources. For existing large hard chromium electroplating tanks, we proposed tightening the emissions limit from 0.015 mg/dscm to 0.011 mg/dscm. For existing small hard chromium electroplating sources, we proposed tightening the emissions limit from 0.030 mg/dscm to 0.015 mg/dscm. For existing decorative chromium electroplating and chromium anodizing sources, we proposed tightening the emissions limit from 0.010 mg/dscm to 0.007 mg/dscm. For all new sources, we proposed tightening the emissions limit to 0.006 mg/dscm. We explained that these emission limits were cost effective.

In our supplemental proposal, we also proposed to require under CAA section 112(d)(6) the same limits that we proposed would provide an ample margin of safety because the limits reflect developments in practices, processes or control technologies and are cost-effective. See 77 FR 6638–45.

We also proposed under both CAA section 112(f)(2) and section 112(d)(6) that sources could instead demonstrate compliance by maintaining surface tension limits of 40 dynes/cm, if measured using a stalagmometer, and 33 dynes/cm, if measured using a tensiometer. These limits are tighter than those currently in the NESHAP, which are 45 dynes/cm, if measured using a stalagmometer, and 35 dynes/cm, if measured using a tensiometer. The proposed surface tension limits would ensure that the alternative compliance option is at least as stringent as the concentration based emissions limits described above. 77 FR at 6644–45. For more information regarding the relationship between surface tension and emissions see the *Development of Revised Surface Tension Limits for Chromium Electroplating and Anodizing Tanks Controlled with Wetting Agent Fume Suppressants* document, which is available in the docket.

We estimated that these proposed emissions limits and surface tension limits would reduce the cancer risks, cancer incidence, and the number of people exposed to risks greater than 1-in-1 million due to emissions of hexavalent chromium from this industry by 25 to 50 percent. 77 FR at 6648–49.

We proposed that existing sources would need to meet the limits no later than 2 years after the effective date of the final rule. Section 112(f)(4) generally provides that a standard promulgated pursuant to CAA section 112(f)(2) applies 90 days after the effective date, but further provides for a compliance period of up to 2 years where the Administrator finds that such time is necessary for the installation of controls and that steps will be taken during that period to assure protection to health from imminent endangerment. In the supplemental proposal, we explained that a 2-year compliance period was necessary for facilities to determine if they meet the proposed emissions limits, schedule a compliance test, perform an engineering analysis to determine the control options, and install and test new emissions control equipment. We further proposed that new sources must comply with the emission limits or surface tension limits upon start-up. See 77 FR 6649.

As stated in the proposed preamble, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is requiring owners and operators of Chrome Electroplating/Steel Pickling facilities to submit electronic copies of required performance test reports.

As mentioned in the proposed preamble, data will be collected through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). The ERT will generate an electronic report which will be submitted to the EPA's Central Data Exchange (CDX) through the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the ERT can be found at: *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site: (*www.epa.gov/cdx*).

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the previously mentioned ERT Web site. The EPA believes, through this approach, industry will save time in the performance test submittal process. Additionally this rulemaking benefits industry by cutting back on recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept on site.

As mentioned in the proposed preamble, State, local and tribal agencies will benefit from more streamlined and accurate review of electronic data that will be available on the EPA WebFIRE database. Additionally performance test data will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. The major advantages of electronic reporting are more fully explained in the proposed preamble.

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, tribal agencies and the EPA significant time, money and effort while improving the quality of emission inventories and, as a result, air quality regulations. See

77 FR 6649–50. We proposed that the revised reporting requirements would apply upon promulgation of the final rule.

C. Overview of the Steel Pickling Source Category

Steel pickling is a treatment process in which the heavy oxide crust or mill scale that develops on the steel surface during hot forming or heat treating is removed chemically in a bath of aqueous acid solution. There are two specific processes regulated under the Steel Pickling NESHAP. Pickling is a process applied to metallic substances that removes surface impurities, stains, or crusts to prepare the metal for subsequent plating (e.g., with chromium) or other treatment, such as galvanization or painting. A pickling line is defined in the rule as using an acid solution in any tank in which hydrochloric acid is at a concentration of 6 percent by weight or greater and has a temperature of 100 °F or greater. An acid regeneration plant is defined in the rule as the equipment and processes that regenerate fresh hydrochloric acid (HCl) pickling solution from spent pickle liquor using a thermal treatment process. The HAP emission points from the steel pickling process include steel pickling baths, steel pickling sprays, and tank vents. The HAP emission point from acid regeneration plants is the spray roaster.

We estimate that there are approximately 100 facilities subject to the Steel Pickling NESHAP. Many of these facilities are located adjacent to integrated iron and steel manufacturing plants or electric arc furnace steelmaking facilities (minimills) that produce steel from scrap. Acid Regeneration facilities may or may not be located at steel pickling operations.

D. Summary of the Proposed Amendments to the Steel Pickling Source Category

In 2010, pursuant to section 112(f)(2) of the CAA, we evaluated the residual risk associated with the NESHAP. We also conducted a technology review, as required by section 112(d)(6) of the CAA. Based on our risk analysis, we determined that there were no cancer risks attributable to emissions from the steel pickling source category. We also estimated the maximum chronic non-cancer TOSHI value to be 2 based on emissions of chlorine and the maximum off-facility-site acute Hazard Quotient (HQ) value could be up to 0.4, based on actual emission levels and the reference exposure level (REL) value for chlorine. 75 FR at 65122–24. We proposed on October 21, 2010 that the risks were acceptable based on our determination that facilities in this source category emit no HAPs that are carcinogens and because the acute risks were low. While the chronic non-cancer TOSHI level for one facility exceeded the reference level, we noted that this facility has had compliance issues with the standard and that the actual emissions we relied on for this facility included emissions in excess of what is allowed under the MACT standard. We estimate that if emissions were maintained at levels equal to or lower than the level allowed by the MACT limit (6 ppm) then the TOSHI would be no higher than 1. The next highest HI from any facility in the source category is 0.1.

We identified one development in practices, processes or control technologies for this source category, but determined that it was not technically feasible for the industry. 75 FR at 65124. Thus, we proposed that no amendments were necessary under both the second part of the section 112(f) review, determining whether the standard provides an ample margin of safety and prevents an adverse environmental effect, and for the 112(d)(6) review. 75 FR at 65124. However, under section 112(d)(2) and 112(d)(3), we proposed to eliminate the startup, shutdown and malfunction (SSM) exemption in the Steel Pickling NESHAP in light of the court's decision in Sierra Club v. EPA (Sierra Club v. EPA, 551 F.3d 1019 (D.C. Cir. 2008) 130 S. Ct. 1735 (2010)). We proposed several revisions to the regulations regarding SSM, including:

- Revising Table 1 to indicate that the requirements in 40 CFR 63.6(e) of the General Provisions, regarding the ''duty to minimize'' emissions do not apply and instead proposed to incorporate it in 40 CFR 63.1159(c).
- Removing the SSM Plan requirement requiring affected sources to calculate their emissions during startup and shutdown and to maintain records of the startup and shutdown emission calculations.
- Revising the SSM-associated monitoring, recordkeeping and reporting requirements to require reporting and recordkeeping for periods of malfunction.
- Adding provisions to provide an affirmative defense against civil penalties for violations of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

In the February 2012 supplemental proposal (77 FR 6628) we proposed two additional actions for the Steel Pickling source category. First, we proposed to remove a compliance alternative established in the original MACT rule. The alternative compliance option allowed existing HCl regeneration facilities to request approval for an alternative source-specific chlorine concentration standard from their permitting authority. We stated that we believe that this alternative compliance option was not appropriate under CAA sections 112(d)(2) and (3) and that the option had been adopted inappropriately. Second, we proposed to require electronic reporting for the Steel Pickling and HCl Acid Regeneration source category similar to that described above for the chromium electroplating and chromium anodizing source categories and for the same reasons.

III. Summary of the Final Rule

A. What are the final rule amendments for the Chromium Electroplating and Chromium Anodizing source categories?

1. Risk and Technology Review

For all three chromium electroplating and chromium anodizing source categories, we are finalizing the emission and surface tension limits as proposed in the supplemental proposal under Sections 112(d)(6) and 112(f)(2) of the Clean Air Act. However, as noted in the following paragraphs, we performed additional analyses based on issues raised and information submitted during the comment period, which add further support for this final action.

Additional information on emissions and controls from chromium electroplating and chromic acid anodizing sources was submitted to EPA during the comment period, and we also obtained additional data and information from some States and industry shortly after the close of the comment period. The information supported the data and analyses we had performed to develop the emissions limits for the supplemental proposal. For example, we obtained data from two additional chromic acid anodizing plants that showed they had emissions well below the limits we are promulgating and that indicates the anodizing plants can easily meet the limits with readily available common control technologies. We also obtained additional data from hard chromium electroplating plants that shows even more plants than we estimated in the proposal are already meeting the lower emissions limits.

We also performed new analyses of the costs of the proposed requirements and the emissions reductions that would be achieved based on the information that became available after we issued the supplemental proposal.

The revised costs and emissions reductions are similar to those presented at proposal (77 FR 6628). For example, the overall total estimated annualized cost in the supplemental proposal was $3,000,000 and cost-effectiveness was estimated to be $14,900 per pound of hexavalent chromium emissions reductions and we estimated the proposed changes would reduce emissions by 208 pounds per year. We now estimate the overall total annualized cost of the final rule is $2,400,000, that the cost-effectiveness is approximately $11,000 per pound of hexavalent chromium emissions reductions, and that the final rule will achieve 224 pounds per year of hexavalent chromium reductions. Our full analysis can be found in *Revised Procedures for Determining Control Costs and Cost Effectiveness for Chromium Electroplating and Anodizing,* which is available in the docket.

With regard to our review under Section 112(f), we continue to conclude that risks are acceptable for all 3 source categories since the cancer MIRs for each of the source categories are below 100-in-1 million, and because a number of the other risk metrics do not indicate high risk concerns. However, as explained below, we are promulgating standards under Section 112(f) to provide an ample margin of safety.

Regarding the standards proposed under Section 112(f)(2), several commenters claimed that, as part of the ample margin of safety analysis included in the proposed rule, we did not evaluate the health impacts (e.g., reduced risk of cancer) of the various options we considered. The comments are summarized in Section IV of this notice and in the Responses to Comments (RTC) document, which is available in the docket.

As set forth in the Benzene NESHAP, in the ample margin of safety decision process, the agency again considers all of the health risks and other health information considered in the first step (acceptability determination). Beyond that information, additional factors relating to the appropriate level of control are considered, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors.

In the supplemental proposal addressing our risk review for the chromium electroplating and anodizing source categories, under the ample margin of safety analysis, we evaluated and presented various emission control options, and the costs and economic impacts associated with those options. While we summarized the risk reductions that would be achieved with the proposed limits, we did not provide information regarding the risk reductions that could be achieved by control options that we did not propose to adopt. In response to the comments we received, we also evaluated the risk reductions that would be achieved by each technically feasible option for each of the chromium electroplating and anodizing source categories and subcategories (i.e., large hard chromium electroplating, small hard chromium electroplating, decorative electroplating and chromic acid anodizing). The results are summarized below.

Baseline Risks for Hard Chromium Electroplating. For the Hard Chromium Electroplating source category (including large and small hard chromium electroplating sources), the MIR due to actual emissions is estimated to be 20-in-1 million, and the cancer incidence is estimated to be 0.05 cases per year. The MIR due to allowable emissions is estimated to be 50-in-1 million, and the cancer incidence based on allowable emissions is estimated to be 0.2 cases per year. Based on actual emissions, approximately 1,100 people are estimated to have cancer risks at or above 10-in-1 million, and approximately 130,000 people are estimated to have cancer risks at or above 1-in-1 million. We estimate that about two-thirds of the population risks are due to large hard chromium sources and the remainder of the population risks are due to small hard chromium sources. We also estimate that the potential is low for chronic and acute non-cancer health effects, and for multipathway risks. As discussed in the preamble to the supplemental proposed rule, we conclude that the risks from this source category are acceptable.

Large Hard Chromium Electroplating Emission Limits

For the large hard chromium sources, we evaluated three control options in the supplemental proposal. The first option, which is the option we proposed and are finalizing today, would be to lower the chromium emissions limit for existing sources from 0.015 mg/dscm to 0.011 mg/dscm. The second option was to lower the limit to 0.0075 mg/dscm, and the third option was to lower the limit to 0.006 mg/dscm. The results of our cost and risk analyses for large hard chromium sources are summarized in Table 4.

TABLE 4—SUMMARY OF COSTS AND RISK REDUCTIONS FOR THE VARIOUS OPTIONS CONSIDERED FOR LARGE HARD CHROMIUM ELECTROPLATING

Option	Emission reductions in lbs/yr	Total emissions in lbs/yr	MIR [1] (in-a-million)		Incidence (cases/yr)	Number of people with risk > 1-in-1 million	Number of people w/ risk > 10-in-1 million	Annualized costs	Cost-effectiveness (per lb)
			Actual	Allowable					
Baseline: current situation	0	454	20	50	0.03	88,000	740	0	NA
Option 1—Final: limit of 0.011 mg/dscm	148	306	[2] 20	40	0.02	59,000	500	$1.7 M	$11,000
Option 2: limit of 0.0075 mg/dscm	169	285	10	30	[2] 0.02	55,000	470	$4.1 M	$24,700
Option 3: limit of 0.006 mg/dscm	180	274	8	20	[2] 0.02	53,000	450	$5.3 M	$29,900

[1] MIR estimates are derived from estimates of actual and allowable emissions. Population risk estimates are derived from estimates of actual emissions.
[2] There are further risk reductions associated with this option compared to the previous option, but they are not large enough to change the risk values as presented to one significant figure.

We also estimated impacts of Option 1 to small businesses, and found that most facilities would have a costs-to-sales ratio of less than 1 percent. However, we estimated that 6 plants could have costs-to-sales ratios up to 9 percent. (See Economic Impact Analysis for Risk and Technology Review: Chromium Electroplating and Chromic Acid Anodizing Source Categories, which can be found in the docket for this action.) For the other two options (Options 2 and 3), we did not quantify the impacts to small businesses, however, they would both pose impacts to a larger number of small businesses since they would impose costs on more facilities and almost all facilities within this category are small businesses. As shown in Table 4, Option 1 also achieves meaningful reductions in risks associated with exposure to a known human carcinogen, including an estimated 30 percent reduction in the

MIR, cancer incidence, and the numbers of people with risks at or above 1-in-1 million and 10-in-1 million. For the other two options (Options 2 and 3), the estimated annualized costs and cost-effectiveness values were more than double those of Option 1 and a significantly greater number of small businesses would be impacted, with only small additional risk reductions achieved beyond Option 1. Although Options 2 and 3 reduce the baseline MIR by 50 percent or more, the baseline MIR is already considerably below 100-in-1 million, and the options reduce incidence and population risks only slightly. Considering the cost, economic, and risk impacts discussed above, we conclude that Option 1 provides an ample margin of safety.

Furthermore, in the 2010 proposal (75 FR 65068), we considered the option of requiring controls similar to standards adopted in California, which would essentially require facilities to install high efficiency particulate air (HEPA) filters on all hard chromium plants. As described in the 2010 proposal, the overall costs for that option were significantly higher than the other options described above, and would have resulted in much greater economic impacts to small businesses. Furthermore, based on more recent analyses, we estimate that the cost effectiveness of requiring HEPA filters on all large hard chromium plants would be at least $27,000 per pound. (see *Revised Procedures for Determining Control Costs and Cost Effectiveness for Chromium Electroplating and Anodizing,* which is available in the docket). With regard to health factors, requirements similar to the California standards would likely reduce risks to below 1-in-1 million for all hard chromium plants. However, given the high overall costs and economic impacts, we have determined that it is not appropriate to require those controls in order to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Therefore, based on all our analyses and after weighing all the factors, we are promulgating the chromium emissions limit of 0.011 mg/dscm, as proposed in February 2012 (77 FR 6628) for existing large hard chromium electroplating sources because we believe that limit will provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

With regard to new sources, we proposed a limit of 0.006 mg/dscm. The rationale for choosing 0.006 mg/dscm is described in detail in the supplemental proposal. After considering public comments and additional analyses, we are finalizing this limit of 0.006 mg/dscm for new large hard chromium plants because this is the lowest level that can be reliably achieved cost-effectively, such as allowing plants the flexibility to use add-on controls or WAFS to comply. This limit will ensure that the risks posed by any new sources will be acceptable and the standard will provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

Small Hard Chromium Electroplating Emission Limits

For small hard chromium electroplating sources, we also evaluated the costs and risk reductions that would be achieved for three main control options. The first option, which is the option we proposed and are finalizing today, would be to lower the chromium emissions limit for pre-1995 sources from 0.03 mg/dscm to 0.015 mg/dscm. The second option was to lower the limit to 0.01 mg/dscm, and the third option was to lower the limit to 0.006 mg/dscm. The basis for evaluating these options is explained further in the supplemental proposal. (77 FR 6628) The results are summarized in Table 5.

TABLE 5—SUMMARY OF COSTS AND RISK REDUCTIONS FOR THE VARIOUS OPTIONS CONSIDERED FOR SMALL HARD CHROMIUM ELECTROPLATING

Option	Emission reductions in lbs/yr	Total emissions in lbs/yr	MIR [1] (in-a-million)		Incidence (cases/yr)	Number of people with risk > 1-in-1 million	Number of people with risk > 10-in-1 million	Annualized costs	Cost-effectiveness (per lb)
			Actual	Allowable					
Baseline: current situation	0	223	20	50	0.02	43,300	360	0	NA
Option 1—Final (0.015 mg/dscm)	33	190	10	30	0.01	36,800	306	$0.5 M	$15,000
Option 2: 0.01 mg/dscm	71	152	7	20	[2] 0.01	29,000	245	$1.5 M	$21,000
Option 3: 0.006 mg/dscm	116	107	4	10	0.008	22,500	190	$2.2 M	$19,300

[1] MIR estimates are derived from estimates of actual and allowable emissions. Population risk estimates are derived from estimates of actual emissions.
[2] The incidence estimate under Option 2 is less than the incidence estimate under option 1, but the estimates are reported as the same when rounded to one significant figure.

We also estimated the impacts of Option 1 to small businesses, and found that most facilities would have a costs-to-sales ratio of less than 1 percent. However, we estimated that 3 plants could have costs-to-sales ratios of about three percent. For the other two options (Options 2 and 3), we did not quantify the impacts to small businesses; however, we know Options 2 and 3 would pose impacts to a larger number of small businesses.

Option 1, as shown in Table 5, achieves approximately a 50 percent reduction in the MIR and cancer incidence associated with exposure to a known human carcinogen, and a 20 percent reduction in the numbers of people with risks at or above 1-in-1 million and 10-in-1 million, for $500,000 in annualized costs. Options 2 and 3 achieve similar reductions in incidence and population risks, but the annualized costs were three and four times higher, respectively, than those of Option 1, and substantially more small businesses would be impacted. Although Options 2 and 3 reduce the baseline MIR by more than half, the baseline MIR is already considerably below 100-in-1 million. Considering the cost, economic, and risk impacts discussed above, we conclude that Option 1 provides an ample margin of safety to protect public health.

Furthermore, as explained in the 2010 proposal, we considered the option of requiring controls similar to the California standards, which would have essentially required all hard chromium electroplating facilities to install HEPA filters. As described in the 2010 proposal, the estimated total capital and annualized costs for that option were much higher than the other options described above and would have imposed much more significant economic impacts to small businesses. Furthermore, based on more recent analyses, we estimate that the cost effectiveness of requiring HEPA filters on all small hard chromium plants would be at least $42,700 per pound. (see *Revised Procedures for Determining Control Costs and Cost Effectiveness for Chromium Electroplating and Anodizing,* which is available in the

docket). With regard to health factors, requiring controls similar to the California standards would likely reduce risks to below 1-in-1 million for all hard chromium plants. However, given the high overall costs, we have determined that it is not appropriate to require controls similar to those in California in the national rule.

In summary, based on all our analyses and after weighing all the factors, we are promulgating the chromium emissions limit of 0.015 mg/dscm, as proposed in the supplemental proposal notice (77 FR 6628) for existing small hard chromium electroplating sources.

With regard to new sources, as described in detail in the supplemental proposal, we proposed a chromium emissions limit of 0.006 mg/dscm. The rationale for choosing 0.006 mg/dscm is described in detail in the supplemental proposal. After considering public comments and additional analyses, we are finalizing this limit of 0.006 mg/dscm for new small hard chromium plants because this is the lowest level that can be reliably achieved cost-effectively, such as allowing plants the flexibility to use add-on controls or WAFS to comply. This limit will ensure that the risks posed by any new sources will be acceptable and the standard will provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

Decorative Chromium Electroplating Emission Limits

For the Decorative Chromium Electroplating source category, the MIR due to actual emissions is estimated to be 10-in-1 million, and the cancer incidence is estimated to be 0.02 cases per year. The MIR due to allowable emissions is estimated to be 70-in-1 million, and the cancer incidence is estimated to be 0.08 cases per year. Based on actual emissions, approximately 100 people are estimated to have cancer risks at or above 10-in-1 million, and approximately 43,000 people are estimated to have cancer risks at or above 1-in-1 million. We also estimate that the potential is low for chronic and acute non-cancer health effects, and for multipathway risks. As discussed in the preamble to the supplemental proposed rule, we conclude that the risks from this source category are acceptable.

With regard to control options, as explained in the preamble of the supplemental proposal, we evaluated possible limits within the range of 0.006 to 0.01 mg/dscm under the technology review and risk reviews. The current standard is 0.01 mg/dscm, and we considered this as the upper limit to be considered. As described in the supplemental proposal, we decided that 0.006 mg/dscm should be the lower end of the range of limits considered because most plants rely on fume suppressants to limit emissions and 0.006 mg/dscm was the lowest concentration that we estimated could reliably be achieved by limiting surface tensions to 33 dynes/cm (as measured with tensiometer) and 40 dynes/cm (as measured with a stalagmometer). However, a portion of the decorative plating sources rely on add-on controls to comply with the NESHAP. Therefore, we also evaluated the emissions levels being achieved by decorative electroplating plants that rely on add-on controls. Based on data we have for 20 tanks at 17 facilities, the emissions concentrations from these 20 tanks are all less than 0.007 mg/dscm. The highest value is 0.0066 mg/dscm. Two of these tanks (about 11 percent) have emissions between 0.006 to 0.0066 mg/dscm. The other 15 tanks have emissions below 0.005 mg/dscm. After evaluating this range, as described in the proposal, we decided to propose an emissions limit of 0.007 mg/dscm, a limit slightly higher than the emissions being achieved by the highest emitting facilities in our data set to minimize the need for additional add-on controls in this source category. Based on the data we have, a limit of 0.006 mg/dscm could result in some plants needing to retrofit their add-on controls which would result in significantly higher costs for those facilities. With regard to reductions, we estimate this option would achieve reductions in overall emissions of far less than 15 percent compared to the 0.007 mg/dscm limit. Therefore, we did not further evaluate the 0.006 mg/dscm limit for existing sources.

As described above, for decorative chromium electroplating sources, we evaluated the costs and risk reductions that would be achieved under one control option for existing sources. That option, which we are finalizing today as proposed, is to lower the emissions limit for existing sources from 0.01 mg/dscm to 0.007 mg/dscm. The basis for evaluating this option is explained further in the supplemental proposal. The results of our cost and risk analyses for decorative chromium electroplating sources are summarized in Table 6.

TABLE 6—SUMMARY OF COSTS AND RISK REDUCTIONS FOR THE VARIOUS OPTIONS CONSIDERED FOR DECORATIVE CHROMIUM ELECTROPLATING

Option	Emission reductions in lbs/yr	Total emissions in lbs/yr	MIR [1] (in-a-million)		Incidence (cases/yr)	Number of people with risk > 1-in-1 million	Number of people with risk > 10-in-1 million	Annualized costs	Cost-effective-ness (per lb)
			Actual	Allowable					
Baseline: Current situation	0	222	10	70	0.02	43,000	100	0	NA
Option 1 (0.007 mg/dscm)	35	187	7	50	[2] 0.02	36,000	80	$170K	$5,000

[1] MIR estimates are derived from estimates of actual and allowable emissions. Population risk estimates are derived from estimates of actual emissions.
[2] The incidence estimate under Option 1 is less than the baseline estimate, but the estimates are reported as the same when rounded to one significant figure.

With regard to the risk reductions achieved by the proposed lower limit of 0.007 mg/dscm, we estimate that the MIR based on actual emissions of hexavalent chromium, a known human carcinogen, would be reduced by about 30%, and the total estimated cancer incidence, the number of people estimated to have cancer risks at or above 10-in-1 million and the number of people estimated to have risks at or above 1-in-1 million would be reduced by about 15 percent. The MIR based on allowable emissions will be reduced from 70-in-1 million to 50-in-1 million. We also considered a limit of 0.006 mg/dscm; however, reducing the limit from 0.007 to 0.006 mg/dscm would provide minimal additional risk reduction and would likely result in more sources needing to upgrade add-on controls which would result in significantly higher costs. Therefore, after considering all the costs, economic and health factors, and comments, we are promulgating an emissions limit of 0.007 mg/dscm for decorative chromium sources, as proposed in the supplemental proposal (77 FR 6628).

With regard to new sources, as described in detail in the supplemental proposal, we proposed a limit of 0.006 mg/dscm. The rationale for choosing

0.006 mg/dscm is described in detail in the supplemental proposal. After considering public comments and additional analyses, we are finalizing this limit of 0.006 mg/dscm for new decorative chromium electroplating plants because this is the lowest level that can be reliably achieved cost-effectively and while still allowing plants the flexibility to use add-on controls or WAFS to comply. This limit will ensure that the risks posed by any new sources will be acceptable and the standard will provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

Chromic Acid Anodizing Emission Limits

For the Chromic Acid Anodizing source category, the MIR due to actual emissions is estimated to be 5-in-1 million, and the cancer incidence is estimated to be 0.003 cases per year. The MIR due to allowable emissions is estimated to be 60-in-1 million, and the cancer incidence is estimated to be 0.08 cases per year. Based on actual emissions, no people are estimated to have cancer risks at or above 10-in-1 million, and approximately 5,000 people are estimated to have cancer risks at or above 1-in-1 million. We also estimate that the potential is low for chronic and acute non-cancer health effects, and for multipathway risks. As discussed in the preamble to the supplemental proposed rule, we conclude that the risks from this source category are acceptable.

For chromic acid anodizing sources, we evaluated the costs and risk reductions that would be achieved for one control option for existing sources. That option, which we are finalizing today as proposed, is to lower the emissions limit for existing sources from 0.01 mg/dscm to 0.007 mg/dscm. The basis for evaluating this option is explained further in the supplemental proposal. The results of our cost and risk analyses for chromic acid anodizing sources are summarized in Table 7.

TABLE 7—SUMMARY OF COSTS AND RISK REDUCTIONS FOR THE VARIOUS OPTIONS CONSIDERED FOR CHROMIUM ANODIZING

Option	Emission reductions in lbs/yr	Total emissions in lbs/yr	MIR [1] (in-a-million)		Incidence (cases/yr)	Number people with risk > 1-in-1 million	Number people with risk > 10-in-1 million	Annualized costs	Cost-effective-ness (per lb)
			Actual	Allowable					
Baseline: Current situation	0	57	5	60	0.003	5,000	0	NA	NA
Option 1 (0.007 mg/dscm)	8	49	3	40	[2] 0.003	4,000	0	$50K	$6,580

[1] MIR estimates are derived from estimates of actual and allowable emissions. Population risk estimates are derived from estimates of actual emissions.
[2] The incidence estimate under Option 1 is less than the baseline incidence estimate, but the estimates are reported as the same when rounded to one significant figure.

As explained in the supplemental proposal (77 FR 6628), we had less source data for anodizing plants; however, we determined that based on the similarities with decorative chromium sources, it was appropriate to evaluate the same options and also to propose the same limits for anodizing plants as proposed for decorative sources. With regard to the risk reductions achieved by the proposed limit of 0.007 mg/dscm, we estimate that the MIR based on actual emissions of hexavalent chromium, a known human carcinogen, would be reduced to about 3-in-1 million, the total estimated cancer incidence would be reduced by about 15%, and the number of people estimated to have risks at or above 1-in-1 million would be reduced from 5,000 to 4,000. As we did for the decorative chromium electroplating category, we also considered a limit of 0.006 mg/dscm for the anodizing category, however the additional reduction in risk that would be achieved by going from 0.007 to 0.006 would be minimal, and this change would likely result in increased costs. After considering all the costs, economic and health factors, we are promulgating an emissions limit of 0.007 mg/dscm for chromic acid anodizing sources (77 FR 6628).

With regard to new sources, as described in detail in the supplemental proposal, we proposed a limit of 0.006 mg/dscm. The rationale for choosing 0.006 mg/dscm is described in detail in the supplemental proposal. After considering public comments and additional analyses, we are finalizing this limit of 0.006 mg/dscm for new chromic acid anodizing plants because this is the lowest level that can be reliably achieved cost-effectively, such as allowing plants the flexibility to use add-on controls or WAFS to meet this level of emissions and this limit will ensure that the risks posed by any new sources will be acceptable and provide an ample margin of safety to protect public health and prevent an adverse environmental effects.

Conclusion—Emissions Limits

The Agency has determined that the risks due to HAP emissions from these source categories are acceptable. Furthermore, after considering all the health and cost factors described above, the agency has determined that the NESHAP for the hard and decorative chromium electroplating and chromic acid anodizing source categories, with the promulgated changes in today's action (as explained above) will provide an ample margin of safety to protect the public health and will prevent an adverse environmental effect.

We are also revising the standards pursuant to CAA section 112(d)(6). Because it is cost effective to meet the limits we are promulgating under CAA section 112(f), described above, we have also determined it is necessary to revise the NESHAP pursuant to CAA section 112(d)(6) to require such limits.

Housekeeping Requirements

We are also revising the standards pursuant to CAA section 112(d)(6) to include several housekeeping requirements. However, in response to comments we received, we are making several minor revisions to the proposed housekeeping requirements to clarify and simplify those requirements. The revisions are summarized below and described in detail in the RTC document, which is available in the docket.

The housekeeping procedures include storage requirements for any substance that contains hexavalent chromium as a primary ingredient; controls for the dripping of bath solution resulting from dragout; splash guards to minimize overspray and return bath solution to the electroplating or anodizing tank; a requirement to promptly clean up or contain all spills of any substance containing hexavalent chromium; requirements for the routine cleaning or stabilizing of storage and work surfaces, walkways, and other surfaces potentially contaminated with hexavalent chromium; a requirement to install a barrier between all buffing,

grinding, or polishing operations and electroplating or anodizing operations; and requirements for the storage, disposal, recovery, or recycling of chromium-containing wastes. The main changes that were made to the housekeeping requirements since the 2010 proposal based on public comments include removing routine housekeeping measures from recordkeeping, adding that cleanup must be initiated within one hour of the spill, and allowing facilities to collect dragout using other methods when drip trays are not practical. The compliance date for implementing the housekeeping procedures will be 6 months after promulgation of the final amendments. More details on the housekeeping requirements are explained in the 2010 proposal and in the RTC document.

Phase-Out of PFOS WAFS

Also pursuant to CAA section 112(d)(6), we are specifying that PFOS WAFS cannot be added to any affected hard chromium electroplating tank, decorative chromium electroplating tank, or chromium anodizing tank as a method to meet the NESHAP requirements for these source categories. In response to public comments about the effectiveness and feasibility of non-PFOS WAFS, we collected information from several chromium electroplating plants in Minnesota that have been using non-PFOS WAFS for several years, and that information confirmed that the non-PFOS substitutes are effective and feasible alternatives to PFOS-based chemicals. See *Information on non-PFOS Fume Suppressants in Minnesota Chromium Electroplating Facilities.* Further details are also provided in the responses to comments provided in Section IV of this FR notice and in the RTC document.

Other Amendments

We are finalizing the changes to the SSM requirements, electronic reporting requirements, test procedures, and monitoring requirements as proposed. We are also finalizing the addition of a provision to provide an affirmative defense against civil penalties for violations of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

B. What are the effective and compliance dates for the Chromium Electroplating and Chromium Anodizing source category amendments?

The effective date for the final rule amendments is September 19, 2012. The compliance date for implementing the housekeeping requirements is March 19, 2013. The compliance date for the revised emission limits and surface tension limits is September 19, 2014. The compliance date for eliminating the use of PFOS-based fume suppressants is September 21, 2015.

C. What are the final rule amendments for the Steel Pickling source category?

1. Revisions Pursuant to CAA Section 112(d)(2) & (3)

At the time we promulgated the original MACT standard, we also established an alternative compliance option for the steel pickling source category that allowed HCl regeneration facilities to apply for a site specific alternative chlorine concentration standard for existing acid regeneration plants. In this final rule, we are removing the alternative compliance option. After reviewing public comments and evaluating additional information received since proposal, we continue to believe that the alternative compliance option provided in the original rule was not appropriate and therefore should be removed from the rule because it allowed a source to establish a source specific limit which could be less stringent than the MACT Floor level of control. Based on our review and analysis of available information, EPA concludes that the emission limit for chlorine can be met using available control technologies such as alkaline scrubbers, and that this level of control is consistent with the MACT floor level of control established in the original NESHAP. We estimate that the amendment to remove the alternative compliance provision will reduce emissions of chlorine by 15 tons per year (tpy).

2. Risk and Technology Review

As provided in the proposed rule, we are not revising the Steel Pickling NESHAP pursuant to CAA sections 112(f)(2) and 112(d)(6). While the chronic non-cancer TOSHI level for one facility exceeded the reference level, we noted that this facility has had compliance issues with the standard and that the actual emissions we relied on for this facility included emissions in excess of what is allowed under the NESHAP.

Given the amendment to remove the alternative compliance option under Section 112(d)(2) and (d)(3) as described above, and assuming that the one facility will apply the necessary controls to achieve compliance with the NESHAP, we estimate that the maximum chronic non-cancer TOSHI for any facility in the category will be less than 1. Therefore, the maximum TOSHI allowed by the NESHAP will be no higher than 1.

Based on consideration of all the risk assessment results, including the fact that the maximum TOSHI allowed by the rule will be no higher than 1, we conclude that risks are acceptable and that the NESHAP will provide an ample margin of safety given the amendments we are promulgating in this action.

Therefore, we are not amending the NESHAP under Section 112(f) because risks are acceptable and the NESHAP, as revised pursuant to 112(d)(2) and (d)(3), provides an ample margin of safety. We are also not amending the NESHAP under section 112(d)(6) because we have not identified new developments in practices, processes or control technologies. We have determined that the Steel Pickling NESHAP, given the amendments we are promulgating in this action, provide an ample margin of safety to protect public health and prevent an adverse environmental effect, and that there have been no advances in practices, processes, and control technologies feasible for this source category.

3. Electronic Reporting

The final rule amendments require owners and operators of affected facilities to submit electronic copies of required performance test reports to EPA's WebFIRE database through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). The ERT generates an electronic report which would be submitted using the Compliance and Emissions Data Reporting Interface (CEDRI). The submitted report will be transmitted through EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database making submittal of data very straightforward and easy. The requirement to submit performance test data electronically to EPA applies only to those performance tests conducted using test methods that are supported by the ERT.

D. What are the effective and compliance dates for the Steel Pickling source category amendments?

The effective and compliance date for the final rule amendments is September 19, 2012.

IV. Summary of Significant Comments and Responses

A. Comments and Responses Associated With the Chromium Electroplating and Chromium Anodizing Source Categories

Many of the significant comments and our responses are summarized in this preamble. A summary of the public

comments on the proposal not presented in the preamble, and the EPA's responses to those comments, is available in the *Responses to Comments* (RTC) document which is available in the Docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2010–0600.

1. Technology Review

Comment: One commenter stated that EPA made the decision to consider more stringent emissions limits primarily because the revised data set indicated that most facilities were operating well below the current emissions limit. The commenter explained that the fact that some facilities operate below the existing standard does not warrant the establishment of revised standards under section 112(d)(6). The commenter added that EPA should expect that some facilities will decide to reduce emissions below the existing standard in order to ensure a compliance buffer. The commenter emphasized that EPA should not set the precedent that an industry that operates with a compliance buffer will be subject to ratcheting down of the standards, since that would create a disincentive for industry sectors to reduce their emissions below the existing MACT standards. The commenter also noted that section 112(d)(6) does not allow EPA to change standards simply because portions of the industry are operating below existing standards or because compliance with new limits may not be cost prohibitive.

The same commenter also stated that EPA has not identified any additional ''practices, processes, [or] control technologies'' that were not identified and considered during the development of the original MACT or the 2010 proposed rulemaking that warrant stricter standards. The commenter explained that EPA's technology analysis stopped when the Agency concluded that facilities are achieving better emissions results than the current standard and once EPA reached that conclusion, the Agency turned to creating options for combining existing technologies to achieve those reduced emission results. The commenter stated that EPA used the emission results to drive the identification of possible combinations of existing technologies and that EPA's basis for revising emissions standards under section 112(d)(6) is not appropriate since section 112(d)(6) requires that any changes in the standards be driven by changes in ''practices, processes, [or] control technologies.'' The commenter added that EPA has not based the proposed emission limit reduction on evidence that new technology has been introduced that can be linked to achieving these new limits (i.e., under section 112 (d)(6)), nor is there ongoing residual risk associated with chromium emissions from these source categories that justifies the stricter standards (i.e., under section 112(f)(2)). Therefore, there is neither a legal nor factual basis for the proposed changes.

Response: We believe the language in section 112(d)(6) provides broad authority for EPA to consider the practices, processes and technologies available at the time we are performing our review. We agree that the fact that some facilities are meeting a limit below the level of the current standard is not alone sufficient to justify revising the existing standard. Rather, we evaluate what practices, processes and technologies are available and consider whether they are cost effective and technologically feasible. If a more stringent standard can be met through cost effective and technologically feasible practices, processes or control technologies, we believe it is necessary within the meaning of section 112(d)(6) to revise the existing 112 standard. We also note that, when developing standards, we take into account the uncertainty associated with measuring emissions and we assume that plants operate with a compliance buffer to minimize the likelihood of exceeding the standard.

Regarding the issue that EPA has not identified any additional ''practices, processes, [or] control technologies'' that were not identified and considered during the development of the NESHAP, the commenter's interpretation of section 112(d)(6) is too narrow. In the 112(d)(6) review, we are not limited to reviewing practices, processes or control technologies that the Agency has never considered. Rather, section 112(d)(6) requires us to take into account developments in practices, processes and control technologies, which include not only new practices, processes and control technologies, but also improvements in efficiency, reduced costs or other changes that indicate that a previously considered option for reducing emissions may now be cost effective or technologically feasible. We also reiterate that improvements in control technology performance over time can provide the basis for revising standards under section 112(d)(6). As explained in the supplemental proposal, many existing facilities have emissions levels more than 10 times below the current emissions limits.

Comment: One commenter stated that EPA is legally required by section 112(d) to set standards based on the best performing sources in California. The commenter stated that current practices and technologies used by the industry in California to comply with rules set by the California Air Resources Board (CARB), 17 Cal. Code Regs. §§ 93101–93102.16, and the South Coast Air Quality Management District (SCAQMD), Rule 1469, represent the type of significant developments that make an update necessary. The commenter pointed out that California standards have achieved greater emission reductions than EPA's existing standard and that EPA may not completely ignore the best-performing similar sources when deciding what limit to set under section 112(d). The commenter listed some of California's standards and stated they are more stringent because they require greater protection for facilities located nearest to sensitive receptors, such as people who attend, work at, or visit schools and daycare centers. In addition, certain facilities are required to use add-on controls, and they require HEPA filters for new sources. The commenter noted that CARB rules limit hexavalent chromium directly, instead of setting limits on total chromium, as under EPA's proposed rule. The commenter stated that EPA should require additional protective measures including siting, monitoring (including continuous emission monitoring), inspection and compliance, public reporting of emissions, community outreach near these facilities to protect public health, systems for community reporting of suspected emission exceedances, enforcement, an 8-year deadline to review and revisit its residual risk analysis for this source category, and similar requirements. For the provisions that require funding, EPA should either allocate or seek this funding, or require registration of each of the chromium electroplating facilities and set a fee for this registration that will pay for these activities. The commenter stated that EPA has not analyzed the ways in which these rules are stronger or provided any discussion of this in the record, as it must do to consider all developments under section 112(d)(6). The commenter stated that EPA has failed to provide any explanation for not considering the California reductions as a regulatory option or explain why EPA's proposed level of the standards for each subcategory is appropriate. The commenter added that California's standards undermine EPA's determination that the existing standards provide an ample margin of safety. Once California demonstrated that it is feasible to require much more

stringent standards than are currently required by the NESHAP, EPA must provide a rational explanation as to why it should not require at least the same level of protection. The fact that California has required HEPA filters for the vast majority of these facilities, while also requiring specific fume suppressants for the smallest facilities, belies EPA's conclusion that its existing MACT meets the test for an ample margin of safety.

Response: We proposed that the existing standards reduce risk to an acceptable level based on our review of health factors such as the maximum individual risk and the number of persons exposed to a cancer risk greater than 1-in-1 million. As part of our technology review and our ample margin of safety analyses, we considered the requirements of California's Airborne Toxic Control Measure (ATCM) for Chromium Plating and Chromic Acid Anodizing Facilities (title 17, California Code of Regulations sections 93102.1 to 93102.16) and of the South Coast Air Quality Management District (SC AQMD) (Rule 1469, Hexavalent Chromium Emissions from Chromium Electroplating and Chromic Acid Anodizing Operations). Specifically, as part of our October 2010 proposal, we evaluated requiring all facilities to install HEPA filters and requiring all facilities that use less efficient controls, such as packed bed scrubbers, to install CMP systems (75 FR at 65092–94); See *Emissions Reductions and Cost Effectiveness of HEPA Filter Retrofits for Chromium Electroplating, and Emissions Reductions and Cost Effectiveness of Composite Mesh Pads for Chromium Electroplating,* which are available in the docket for this rulemaking. These devices, alone or in combination with fume suppressants or other add-on devices, are the controls used to comply with the standards in California. As explained in the 2010 proposal (75 FR 65068) we evaluated the capital costs, annualized costs, cost-effectiveness, and number of plants impacted. Based on those analyses, we concluded that requiring these controls throughout the industry was not appropriate under either section 112(d)(6) or 112(f)(2).

Furthermore, we disagree with the comment that EPA should follow the California example for people who attend or visit schools and daycare centers, or other sensitive receptors that are located close to these sources. Based on our analyses, we conclude that this NESHAP, with the changes being promulgated today, will provide an ample margin of safety for all populations and subpopulations regardless of the location of sensitive receptors and therefore we disagree that a special provision is needed with regard to location of these receptors. With regard to siting requirements, community reporting, community outreach and registration fees, we believe these items are not appropriate or necessary for this National rulemaking.

With regard to the comment that CARB rules limit hexavalent chromium directly (instead of setting limits on total chromium), we believe it is appropriate to regulate chromium compounds (rather than hexavalent chromium) under the national standards developed pursuant to the CAA because section 112(b) of the CAA lists chromium compounds as the HAP which the EPA is to regulate. Nevertheless, because the emissions of total chromium are estimated to be 98 percent hexavalent chromium, a total chromium emissions limit is effectively a hexavalent chromium limit for these source categories. The NESHAP established emission limits in terms of total chromium, as measured by Methods 306 or 306A. Both of these methods measure the total amount of chromium present in the exhaust stream, regardless of the form of the emissions (hexavalent or trivalent chromium).

Comment: A commenter claimed that EPA may not lawfully set surface tension limits as an alternative to an emission standard because doing so violates section 112(h), 42 U.S.C. § 7412(h). The commenter pointed out that section 112(h) of the Act, id. § 7412(h), requires EPA to set a numerical standard for control of HAPs whenever it is feasible to promulgate and enforce a standard in such terms. The commenter acknowledged that EPA may promulgate work practice standards instead of numerical standards only if measuring emission levels is technologically or economically impracticable and that EPA may substitute work practice standards for emission limits only if doing so is consistent with the provisions of subsection (d) or (f). The commenter stated that EPA has not satisfied section 112(h)(1), which is required to set an alternative work practice standard in lieu of an emission standard and added that EPA may not set a section 112(d) emission standard based solely on one type of technology (fume suppressants), when other methods are available to achieve greater reductions. The commenter also said that EPA must set surface tension limits not as an alternative, but in addition to the concentration-based limits. The emission concentration-based limits must apply at all times. The commenter suggested that EPA update and strengthen the proposed surface tension limits so that they are at least as stringent as the emission concentration-based standards, and to require these limits to apply in addition to, but not in lieu of, emission limits.

Response: We disagree with the commenter that it is unlawful to set an alternative to a numerical emissions limit. The CAA allows us to establish alternatives to numerical emissions limits if we can demonstrate that the alternative limit (in this case, the surface tension limit) is at least as stringent as the numerical emissions limit. For the reasons described below, we also reject the commenter's assertion that the proposed surface tension limits are not as stringent as the proposed emission limits. Our analysis shows that maintaining the surface tension at the proposed levels is at least as stringent as the proposed emission limits, both for existing and for new sources. The data demonstrate that, when surface tension is no greater than 40 dynes/cm (when measured using a stalagmometer) or 33 dynes/cm (when measured using a tensiometer), emissions will be no greater than 0.006 mg/dscm. The proposed chromium emission limits for existing sources (0.011 mg/dscm for large hard chromium electroplating, 0.015 mg/dscm for small hard chromium electroplating, and 0.007 mg/dscm for decorative chromium electroplating and chromium anodizing), all exceed the 0.006 mg/dscm concentration associated with the proposed surface tension limits and the emissions limit for all new sources (0.006 mg/dscm) is equivalent to the level achieved with these surface tension limits. We also disagree that the proposed surface tension limits constitute establishing an emission standard based solely on one type of technology (i.e., fume suppressants). The NESHAP sets numerical emission standards for all of the affected chromium electroplating and anodizing sources. However, plants can elect to comply with the standard by meeting the surface tension limits through the use of fume suppressants. Section 112(h)(1) addresses setting an alternative work practice standard when a numerical emission standard is not feasible, but that is not the case for the chromium electroplating NESHAP because the existing NESHAP includes both a numerical emission limit and an alternative surface tension limit that will ensure that the emission limit is met at all times by sources that choose

to use the surface tension limit compliance alternative.

Comment: One commenter stated that EPA reviewed data from only 17 decorative chromium facilities and one anodizing facility, and concluded that all decorative and anodizing facilities already comply with the new proposed emissions limits (77 FR at 6642–6644.) The commenter goes on to say that EPA acknowledged that 8 decorative facilities may need to make adjustments and achieve reductions to meet the new emissions limits, but dismissed these data by claiming that these facilities would choose to comply with the new NESHAP with the surface tension levels rather than the new emissions limits. The commenter noted that EPA admitted that it did not perform any detailed analysis for anodizing facilities. Rather, EPA concluded that anodizing processes are similar enough to decorative processes so the proposed limits would also be appropriate. The commenter stated that EPA had limited data and had weak scientific and technical basis to support or justify the proposed limits for decorative and anodizing facilities.

Response: In evaluating the impacts of the proposed requirements on the existing decorative chromium electroplating and chromium anodizing facilities that comply with emissions limits (as opposed to those plants that comply with the surface tension limits), we reviewed the available data. For the 17 decorative tanks in our data set, all of these tanks have emissions below 0.007 mg/dscm and many have emissions more than 10 times below this level. Although all of the emissions data indicated that existing facilities would meet the more stringent emissions limit of 0.007 mg/dscm, we conservatively assumed that at least some facilities would not meet this limit and would require further controls. The commenter is not correct that we assumed the 8 facilities would choose to comply with the surface tension levels rather than the new emissions limits. However, we did assume those facilities would choose to use fume suppressants to achieve some emissions reductions to comply with the more stringent emissions limits, but we disagree that this assumption means that we dismissed those plants. Using fume suppressant in combination with add-on controls is a relatively common practice for meeting emissions limits in the chromium electroplating industry.

Regarding the data on chromium anodizing, we have obtained emission test data for two additional chromium anodizing plants, one of which is located in Connecticut that reported emissions as 0.0007 mg/dscm, and the other located in Massachusetts that reported a concentration of 0.001 mg/dscm. In addition, we reviewed emission test data we had previously received for three chromium anodizing plants located in California. The data show emissions for tanks controlled with HEPA filters to range from 0.0000097 to 0.00056 mg/dscm. Based on the control efficiencies reported by California, we estimate that, if these tanks were controlled with CMPs instead of HEPA filters, emissions would range from 0.000097 to 0.0056 mg/dscm. As shown in the cost analysis technical memo, we already had data for a plant in Oklahoma with reported emissions of 0.0016 mg/dscm.

With regard to add-on controls, based on available information we conclude that the CMP is a readily available control technology that can be applied to anodizing plants and can easily meet a limit of 0.007 mg/dscm for these type of plants. Other technologies can also likely meet this limit. For example, the Connecticut and Massachusetts plants have chromium mist eliminators (and have emissions of 0.0007 mg/dscm, and 0.001 mg/dscm, respectively) and the plant from Oklahoma, which has emissions of 0.0016 mg/dscm, is controlled with a wet scrubber. The data from the Connecticut plant, Massachusetts plant, Oklahoma plant, and the plants in California all support our assumption that most existing chromium anodizing plants that are currently complying with the existing emission limit could easily meet the revised emissions limit of 0.007 mg/dscm without additional controls. We received no data for any decorative or anodizing plants that would not be able to meet these lower limits.

2. Risk Assessment

Comment: One commenter contended that EPA did not assess multipathway health risk for chrome plating because hexavalent chromium is not on the outdated list of 14 PB–HAPs that EPA has used for this risk assessment. The commenter noted EPA's statement that, ''PB–HAP emissions were not identified from the chromium anodizing, decorative chromium electroplating, and hard chromium electroplating source categories, indicating that exposures due to non-inhalation routes of exposure are not significant.'' The commenter argued that this is unlawful, arbitrary and capricious because the science demonstrates this pollutant can indeed cause health effects when a person is exposed through a pathway other than inhalation. Evolving research continues to show risk to animals and thus, potentially, both to the environment and to human health, from oral and systemic exposure through water-based ingestion, rather than just inhalation. EPA therefore must assess the multipathway health risk.

The commenter supported this argument by referring to California EPA's Office of Health Hazard Assessment (OEHHA)'s recent revisions to Risk Assessment Guidelines, which, according to the commenter, provide evidence that under some environmental conditions hexavalent chromium contamination can persist in soil presenting an exposure risk via ingestion and dermal exposure to contaminated soils, creating a cancer risk.[1] The commenter noted that EPA's failure to consider cancer risk from ingestion in its analysis is unlawful, arbitrary and capricious.

The commenter recommended that the EPA perform a multipathway analysis for this source category that fully accounts for exposure that can occur to a child in an urban or residential setting. The commenter suggested that the EPA assess multipathway risk based on the allowable emissions, as it has done for inhalation risk. Further, the commenter reported that the OEHHA's scientists found that there is the potential for hexavalent chromium uptake in plants and fish and concluded that to protect public health, exposure via ingestion of contaminated crops and fish must also be considered.

Response: The current persistent and bioaccumulative HAP (PB–HAP) list in the Air Toxics Assessment Library (see *http://www.epa.gov/ttn/fera/risk_atra_main.html*), was developed considering all of the available information on persistence and bioaccumulation. This list was peer-reviewed by the SAB, and it is reasonable to use it in the RTR program. In addition, the Agency does not have information, nor did the commenter provide information, that would enable the EPA to determine whether the deposition of airborne hexavalent chromium from chromium electroplaters and the subsequent movement of the hexavalent chromium in the environment would result in human exposures that could be of concern. With regard to the environment, the limited available

[1] Cal. EPA, OEHHA, Air Toxics Hot Spots Program Risk Assessment Guidelines, Technical Support, Document for Exposure Assessment and Stochastic Analysis, Scientific Review Panel Draft at F–27, E–5 (Feb. 2012), *http://oehha.ca.gov/air/hot_spots/SRP/index.html*), *http://oehha.ca.gov/air/hot_spots/SRP/index.html;* see also id. at E–12 tbl. E3 (describing exposure pathways for analysis).

information on the persistence and bioaccumulation of hexavalent chromium suggests that there is no indication of the biomagnifications of hexavalent chromium along the aquatic food chain, and that chromium has low mobility for translocation from roots to aboveground parts of plants. (ATSDRs Tox profile 2008 *http://www.atsdr.cdc.gov/toxprofiles/tp7.pdf*).

Comment: One commenter stated that the residual risk assessment underestimates risk to the developing child and fetus. The commenter observed that biological differences in the developing child and fetus can result in increased cancer and non-cancer risk due to both increased exposure and increased vulnerability, and emphasizes that the EPA must account for the increased susceptibility of children to HAP emissions from this source category in the risk assessment. The commenter noted that according to OEHHA, there is an increased risk indicated from early life exposures and asserted that EPA's failure to include an adequate evaluation of increased early life susceptibility to HAP emissions systematically underestimates risk from hexavalent chromium emissions of this source category. The commenter stated that the EPA must follow the lead of OEHHA and include additional factors to address early life exposure in its risk assessment. The commenter also cited a recent EPA toxicological review and cancer toxicity reviews from California EPA (CalEPA) that provide evidence for the mutagenic activity of hexavalent chromium compounds, and developmental, female reproductive and male reproductive toxicity.[2] [3] [4] The commenter suggested that under the 2005 Guidance, risk assessments of exposure to hexavalent chromium should include adjustment for early life exposures and the estimates included in the residual risk assessment fail to include the full health risk.

The commenter noted that the EPA restricted its application of age-dependent adjustment factors to those HAPs included in EPA's 2006 list of carcinogenic HAPs that act by a mutagenic mode of action, and did not apply age-dependent adjustment factors to assess cancer risk from chromium. The commenter recommended that the EPA update both its 2005 *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens* (attached to comment letter), and EPA's 2006 list of carcinogenic HAPs that act by a mutagenic mode of action to use age-dependent adjustment factors for hexavalent chromium in the *Supplemental Guidance* and incorporate more recent evaluations of carcinogenic modes of action in the list of carcinogenic HAPs. The commenter also suggested that the EPA should consult with multiple scientific bodies on the scientific basis of the proposed rulemaking: National Academy of Sciences, the Office of Children's Health Protection, the Children's Health Protection Advisory Committee, and scientists in the Office of Research and Development who focus on children's and community health (such as experts in the National Center for Environmental Research). The commenter asked the EPA to consider and follow its 2008 handbook on child-specific exposure factors in this rulemaking, and follow the Science Advisory Board's recommendations regarding the greater exposure and vulnerability of children.[5]

The commenter also pointed out that Congress recognized this science in the Food Quality Protection Act (FQPA) for pesticide chemical residue, where Congress used a ten-fold margin of safety for infants and children. The commenter also provided a table of comparisons between OEHHA child-health reference values and those of EPA.

Response: The EPA disagrees with the commenter's statement that the risk assessment underestimates risk to children and lacks consideration of early-life susceptibility. The EPA agrees that biological differences across lifestages may lead to differences in the susceptibility to HAP, as can differences among population groups due to pre-existing disease states or other factors. Accordingly, the methods we use in risk assessments have taken this into account. For the dose-response component of HAP assessments for RTR, the EPA uses exposure reference concentrations and unit risk estimates (UREs) that are expressly derived with the objective of protecting sensitive populations and lifestages, including children (see U.S. EPA, 2002). A Review of the Reference Dose and Reference Concentration Processes. EPA/630/P–02/002F. Risk Assessment Forum, Washington DC. Available online at *http://www.epa.gov/raf/publications/pdfs/rfd-final.pdf*). For example, a review of the chronic reference value process concluded that the Agency's reference concentration (RfC) derivation process adequately considers potential susceptibility of different subgroups with specific consideration of children, such that the resultant RfC values pertain to the full human population including ''sensitive subgroups,'' inclusive of childhood. With respect to cancer risk assessments, assessments are performed in accordance with EPA's Supplemental Guidance for Assessing Susceptibility from Early-life Exposure to Carcinogens (US EPA, 2005). This Guidance recommends the application of age-dependent adjustment factors for assessing cancer risk from carcinogenic pollutants concluded to act via a mutagenic mode of action and for which information on early-life susceptibility is lacking. The basis for this methodology is provided in the 2005 Supplemental Guidance. With regard to other carcinogenic pollutants for which early-life susceptibility data are lacking, it is the Agency's long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity (U.S. EPA, 2005).[6]

EPA disagrees with the commenter that EPA should use California EPA's child-specific reference doses for school site risk assessments[7] in order to address the potential for early-life susceptibility. EPA methods for assessing hazard and dose-response relationships for HAPs and developing RfCs and cancer risk estimates, as noted above, specifically address the potential for early-life susceptibility. Whenever data indicate increased susceptibility of a developmental lifestage or of a population group, those data are

[2] EPA, IRIS, Draft, Technological Review of Hexavalent Chromium (CAS No. 18540–29–9), In Support of Summary Information on the Integrated Risk Information System at 238 (Sept. 2010).

[3] Cal. EPA OEHHA, Public Health Goal for Hexavalent Chromium in Drinking Water (July 2011).

[4] Cal. EPA, OEHHA, Evidence of the Developmental and Reproductive Toxicity of Chromium (Hexavalent Compounds) 3 (Aug. 2009), *http://www.oehha.ca.gov/prop65/hazard_ident/pdf_zip/chrome0908.pdf.*

[5] U.S. EPA, Child-Specific Exposure Factors Handbook (Sept. 2008), EPA/600/R–06/096F, *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=199243.*

[6] The EPA has not yet determined whether hexavalent chromium poses disproportionate risks to children, but is currently developing an assessment of hexavalent chromium which likely will address that issue.

[7] We note that California EPA's use of these numerical values, which do not exist for inhalation exposures, is limited to the context of risk assessment at proposed or existing California school sites and does not extend to their Air Hot Spots Risk Assessment program. Further the guidance for the California EPA school site assessment program specifies the use of California OEHHA or U.S. EPA IRIS values in the absence of the school site risk assessment child-specific values (Cal OEHHA, 2004—*http://www.oehha.ca.gov/public_info/public/kids/pdf/SchoolscreenFinal.pdf*).

factored into the analysis. When data are inadequate to understand the effects of a specific pollutant on sensitive subpopulations, which, for some pollutants, may include children, the Agency's risk assessment methods take that into account to ensure that resulting assessments address the possibility that such subpopulations might be more or less sensitive.

3. Environmental Justice

Comment: One commenter questioned why EPA's risk assessment did not consider all of the factors recommended in EPA's own Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) and why EPA did not propose stricter controls in light of the demographic risk results for hard chromium electroplaters. The commenter also stated that, as specified in the EPA's Interim Guidance on Considering Environmental Justice during the Development of an Action, EPA should consider addressing existing disproportionate impacts on minority, low-income or indigenous populations during this rulemaking. The commenter requested that a full evaluation of disproportionate impacts be conducted following guidance in EJSEAT and an evaluation of how this assessment could reduce impacts to those communities. The commenter noted that the Online Tracking Information System (OTIS) database appears to do this already at the facility-specific level and can be incorporated into the assessment to more accurately define the number of the individuals impacted by the emissions and the demographics of the impacted community. The commenter recommended that EPA work with the Office of Environmental Justice to adequately evaluate the proposed rulemaking with regard to communities experiencing disproportionate impacts.

Another commenter stated that CARB has created a draft methodology to screen for cumulative impacts in communities. EPA should use this or a similar tool to find and provide greater protection for the local communities most affected by this source category. EPA has even developed a draft version of this type of tool for enforcement and compliance purposes, specifically the EJSEAT that, without explanation, it has not used in this rulemaking.

Response: The EPA's ''Interim Guidance on Considering Environmental Justice During the Development of an Action,'' encourages rule writers and policy makers to look at the whole range of relevant factors that impact communities and population groups when crafting rules. The EPA is continuing to discuss and pilot approaches for conducting its analyses that are consistent with the agency's responsibilities regarding EJ as outlined in Executive Order (EO) 12898.

We believe these NESHAP, with the amendments being promulgated in today's action, will provide an ample margin of safety to protect the health of all population groups. As stated in the Benzene NESHAP, in determining the need for residual risk standards, we strive to limit to no higher than approximately 1-in-10 thousand (100-in-1 million) the estimated cancer risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years and, in the ample of safety decision, to protect the greatest number of persons possible to an individual lifetime risk level of no higher than approximately 1-in-1 million. These considerations are made for all people regardless of racial or socioeconomic status. However, in determining whether to require additional standards under Section 112(f), these levels are not considered rigid lines, and we weigh the cancer risk values with a series of other health measures and factors in both the decision regarding risk acceptability and in the ample margin of safety determination. We also consider cost of controls in the ample margin of safety determination.

The results of our demographic analyses for hard and decorative chromium electroplating indicate that certain minority groups and low-income populations may be disproportionately exposed to emissions from these categories and to any risks that may result due to these emissions because the communities most proximate to facilities within these categories have a higher proportion of these groups than the national demographic profile. We did not identify any vulnerability or susceptibility to risks particular to minority and low income populations from pollutants emitted from this source category. The Agency has determined that the existing NESHAP for these source categories reduce risk to an acceptable level for all proximate populations, including minority and low-income populations.

We agree with the commenter on the importance of working closely with the EPA's Office of Environmental Justice (OEJ), as well as other offices across the agency, to develop criteria and specific guidance on how to interpret and apply the outcome of our analyses in the rulemaking process. While the EJSEAT and OTIS database are general tools that can be used in considering environmental justice issues, the demographic analyses we performed are more appropriate for this source category-specific rulemaking. We are working with the OEJ, the Office of Research and Development and other Agency offices in an ongoing effort to assess ways to address cumulative risk and develop new tools for considering environmental justice in rulemakings.

In addition, as addressed more fully in the RTC, while we understand that some communities are exposed to multiple pollutants emitted by many different types of sources, EPA under Plan 2014 is assessing ways to address these exposures through a cumulative impact analysis.

4. Emissions Estimates

Comment: In response to the 2012 supplemental proposal, one commenter contacted approximately 300 of the facilities that EPA identified as having the highest emissions and received information from 181 plants. The commenter stated that out of the plants that responded, 62 plants were closed, 24 plants do not use chromium, 39 plants have lower emissions than reported by EPA, and 7 plants have emissions estimates consistent with that relied on by EPA. The commenter also claimed the data for several other plants were incorrect. If revisions were made to emissions estimates for these 181 plants based on this information, the resulting overall emissions would be 73% lower than the EPA's estimates for these 181 plants. The commenter recognized that estimates found for the higher-emitting, higher-risk facilities could in part be counterbalanced by emissions estimates for lower risk facilities the commenter did not investigate, but the commenter believes that EPA's analysis would still not account for the 73% reduction in emissions for this set of facilities resulting from facility closures and switches to non-hexavalent chromium processes.

Response: We reviewed the data provided by the commenter and we created a separate source category emissions dataset that reflects most of the changes suggested by the commenter. Specifically, we excluded all plants reported by the commenter to be closed or to not use hexavalent chromium. We also included revised emissions estimates for several plants. We conducted risk modeling with this dataset, and the results were not significantly different from the assessment conducted for the supplemental proposal. The MIR, HI, and incidence estimates for all source categories were essentially unchanged, and the population risk differences were

not significantly different. For example, for the hard chromium electroplating source category, the number of people estimated to be at cancer risk greater than or equal to 1-in-1 million is 120,000 based on the new dataset, and 130,000 in the previous assessment. Because of the very small differences in risk results based on this modeling, we decided that the data do not warrant revising the overall risk assessment we conducted for the supplemental proposed rule. Regardless, the data do not change the decisions set forth in the supplemental proposal.

5. Costs and Economic Impacts of Proposed Limits

Comment: One commenter believes that EPA has under-estimated the costs associated with using non-PFOS fume suppressants and questions whether EPA evaluated comparable products when coming up with costs for fume suppressants. The commenter noted that fume suppressants are available in a number of different formulations that contain non-PFOS and PFOS in various concentrations. The commenter stated that EPA has not included all of the additional costs associated with the use of non-PFOS fume suppressants, such as the differences in the frequency that suppressants need to be added to plating baths, and the increased surface tension monitoring and maintenance associated with use of non-PFOS fume suppressants. The commenter further explained that several facilities have reported that costs for converting to non-PFOS fume suppressant may be more than 30 percent higher than using PFOS fume suppressants. The commenter stated that one facility estimated that its annual costs for fume suppressants would increase by approximately $100,000 with the switch to non-PFOS fume suppressants.

Response: To support the supplemental proposal, EPA contacted several fume suppressant vendors in order to calculate the costs of both PFOS and non-PFOS based fume suppressants. After reviewing the information from vendors, we concluded costs for the non-FOS suppressants would be similar to the costs for PFOS suppressants or slightly higher. To be conservative (more likely to overestimate rather than underestimate the costs), we estimated that the cost of non-PFOS fume suppressants was 15% higher than that of PFOS fume suppressants (see *Procedures for Determining Control Costs and Cost Effectiveness for Chromium Electroplating Supplemental Proposal* memorandum, which is available in the docket for this action). After receiving comment on the supplemental proposal, EPA contacted several facilities in Minnesota that have switched from a PFOS-based fume suppressant to a non-PFOS-based fume suppressant and asked for information on the price differences between the two products. Three facilities contacted agreed that the price of non-PFOS was slightly higher, but were not aware of how much higher, while three other facilities stated they did not consider the products to have a significant difference in price. Additionally, EPA asked facilities about any changes in fume suppressant consumption that may have occurred after switching to a non-PFOS fume suppressant. One facility stated that they consume less fume suppressant after switching to a non-PFOS fume suppressant and therefore overall costs were similar or perhaps have decreased since switching to the non-PFOS suppressant. All other facilities stated they did not notice any difference in effectiveness, consumption, or required maintenance of the non-PFOS fume suppressant (see *Information on non-PFOS Fume Suppressants in Minnesota Chromium Electroplating Facilities* memorandum, which is available in the docket for this action). While the commenters raise general concerns about potential higher costs, they did not provide any specific details about why costs would be higher for any specific facility or group of facilities. Based on the best information available to us, we believe that the price and cost methodology we are relying on for this rule provide reasonable estimates of the costs associated with using non-PFOS fume suppressants.

6. Non-PFOS Fume Suppressants

Comment: Two commenters stated that EPA has not demonstrated that the proposed surface tension limits can be met using non-PFOS fume suppressants. One commenter pointed out that the data used by EPA to support the proposed surface tension limits are based on chromium electroplating tanks controlled with WAFS that contain PFOS. The commenter recognized that EPA proposed a 3-year compliance date for the limit on the use of WAFS containing PFOS. The commenter believes that EPA has not demonstrated that the proposed surface tension limits can be met using non-PFOS WAFS.

One commenter stated that EPA has provided no data in the record that shows non-PFOS fume suppressants can achieve the proposed new surface tension levels and that EPA merely assumes non-PFOS fume suppressants are equivalent in performance to PFOS fume suppressants without presenting any scientific proof or supporting data. The commenter believes that EPA ignored the fact that fume suppressants can perform differently in decorative chromium and chromium anodizing plating baths. The commenter explained that the data that EPA references to support its claim that fume suppressants effectively reduce emissions to meet the proposed limits is flawed and provides no scientific evidence that fume suppressants can be used to achieve the proposed emissions limits. The commenter added that EPA cannot claim, in the absence of any credible data in the record, that non-PFOS fume suppressants can reduce emissions as effectively as PFOS fume suppressants. Due to the challenges facing chromium electroplating and anodizing operations in using the new technology to meet the current surface tension levels and the lack of any data in the record to demonstrate that non-PFOS fume suppressants can consistently achieve the proposed surface tension levels, the commenter recommended EPA forego the proposed revisions to the surface tension levels. The commenter also suggested that the burdens of the proposed changes clearly outweigh any perceived benefits. The commenter believes PFOS is a very effective fume suppressant because of its persistent and bio-accumulative nature and acknowledged that PFOS and other long-chain perfluorinated compounds (PFCs) are being phased out by EPA and by other regulatory agencies globally because of the environmental impacts that may result from the use of PFOS. The commenter, however, feels that the biggest challenge in meeting the revised surface tension levels stems from the phase-out of PFOS. The commenter stated that facilities that have switched to non-PFOS fume suppressants have achieved moderate success in meeting the current surface tension levels, but many challenges and problems persist. The commenter believes the switch to non-PFOS fume suppressants diminishes a facility's margin of compliance in meeting the current surface tension levels. The commenter goes on to say that where non-PFOS has shown promise in lowering surface tension levels, it requires more frequent additions, more frequent monitoring, and more labor to maintain surface tension levels compared to the use of PFOS fume suppressants.

Response: Fume suppressants are used to lower the surface tension of electroplating baths, which in turn, reduces the size of gas bubbles generated during electrolysis. These smaller bubbles travel more slowly

through the solution and have less energy when they arrive at the solution's surface. The lower surface tension also reduces the energy with which the resulting droplets are ejected into the air. Together, both of these effects can reduce the emission of droplets, which in turn reduces the amount of chromium emitted by the tank. It is our understanding that this relationship between surface tension and chromium emissions is dependent primarily on the surface tension of the tank and not on the product used to reduce surface tension.

We acknowledge that there may be differences in the performance of non-PFOS based fume suppressants in different types of chromium electroplating tanks, but this is also true of PFOS based fume suppressants. The performance of any type of fume suppressant can depend on the characteristics of the chemical and tank (i.e., temperature, contaminants present, etc.), but EPA has found no evidence that supports the idea that non-PFOS based fume suppressants are unable to reach the surface tension limits being finalized in this rulemaking. EPA contacted several fume suppressant vendors to request information on non-PFOS fume suppressants. The vendors who responded were confident that their non-PFOS fume suppressants could reach the proposed surface tension limits (see *Information on Non-PFOS Fume Suppressants for Chromium Electroplating Supplemental Proposal* memorandum). It has been reported that there are now suitable, successful and well proven non-PFOS fume suppressants for hard and decorative chromium electroplating, and that the surface tension can be reduced to as low as 20 dynes/cm in baths, but are commonly maintained at about 30 dynes/cm. At this level, consumption of the suppressant is minimized and emissions are controlled (Barlowe, G. and Patton, N., 2011). For example, surface tension data from one decorative chromium electroplating plant in Minnesota that has been using non-PFOS fume suppressant for years show they had an average surface tension of 28.7 dynes/cm over the first 6 months of 2012, and their highest reading was 32.4 dynes/cm. They had several readings below 23 dynes/cm, and some values were as low as 18.5 dynes/cm. These data indicate that 33 dynes/cm is quite feasible, especially for decorative chromium electroplating sources. Furthermore, a study by the Danish EPA (Danish EPA, 2011) found that the non-PFOS fume suppressant reduced emissions just as effectively as the PFOS for about the same costs.[8]

In a separate meeting, the EPA discussed the effectiveness of non-PFOS fume suppressants with a major distributer of both PFOS and non-PFOS fume suppressant. The distributor discussed issues that arise when using any type of fume suppressant and stated that, worldwide, they have experienced issues with the switch to non-PFOS based fume suppressants with only a couple of companies. The distributor was confident that their non-PFOS based products could reach the proposed limits and noted that the phase-out of PFOS fume suppressants in Europe and Japan occurred seamlessly (See Summary of EPA Meeting with Atotech March 1, 2012, in the docket for this rulemaking).

EPA also contacted several facilities in Minnesota that have switched from a PFOS-based fume suppressant to a non-PFOS fume suppressant and asked them to describe any changes in the effectiveness or consumption of the fume suppressant. All facilities stated that the non-PFOS based fume suppressant was equally effective as the PFOS-based fume suppressant, with one facility noting the non-PFOS based fume suppressant performed more effectively. In terms of consumption, all facilities stated they have not noticed any increase in fume suppressant consumption since the switch, with one facility stating they consume less fume suppressant per operating hour since switching to the non-PFOS fume suppressant. The facilities that responded also reported no issues with maintaining surface tension levels consistent with the limits we are establishing in the final rule, with one facility stating that since the switch they have seen less surface tension fluctuations in their tank. The responses of Minnesota facilities are summarized in the *Information on Non-PFOS Fume Suppressant Use at Minnesota Chromium Electroplating Facilities* memorandum located in the docket of this rulemaking. Also industry representatives submitted comments supporting the PFOS phase-out.

Comment: One commenter stated that the phase-out of PFOS is being proposed without adequate study of the non-PFOS materials ability to perform as well as PFOS and meet the proposed lower emission limits (as measured by surface tension). The commenter indicated that neither the 2010 proposal docket nor the docket for the supplemental proposal included the reference materials needed to substantiate EPA's conclusions on the availability and feasibility of using non-PFOS fume suppressants to meet the proposed surface tension or emission limits. The commenter is also concerned with the lack of information on how these alternate materials may affect the parts being plated and noted that the procedures followed for their aircraft maintenance are very tightly controlled with extensive testing done prior to implementation of any new procedures. The commenter stated that until adequate testing is completed, which can take longer than the proposed three year timetable for the PFOS phase-out, they will be unable to change to an alternate fume suppressant. The commenter recommended additional study of the available alternatives for aeronautics plating and a process by which industry may petition for additional time to complete the transition to non-PFOS fume suppressants.

Response: EPA has included several documents on the performance of non-PFOS based fume suppressants in the docket to this rule-making (see previous responses). EPA agrees that some electroplaters of highly specialized products may need to perform additional testing in order to integrate the use of non-PFOS fume suppressants and that this testing may require a longer time commitment compared to other products. Nevertheless, we believe that this testing can be accomplished by the compliance date, which is 3 years after the date of publication of this **Federal Register** notice. Additionally, the Clean Air Act allows facilities to apply for an extra year if needed for compliance. Therefore, facilities could have up to 4 years to comply, which should be adequate time to resolve any remaining issues associated with the switch to non-PFOS suppressants.

B. Comments and Responses Associated With the Steel Pickling Source Category

Comment: One commenter opposed the proposed removal of the source-specific alternative concentration standard for chlorine (Cl_2) at HCl acid regeneration facilities. The commenter stated that the current regulation was specifically written to allow for the production of iron oxide of acceptable quality, and that removing the ''alternative concentration standard'' may have the unintended consequence of reducing the quality of the iron oxide produced and negatively impact the marketability of the material. The commenter noted that there are a

[8] Danish, EPA. 2011. Substitution of PFOS for use in non-decorative hard chrome plating. Pia Brunn Poulsen, Lars K. Gram and Allan Astrup Jensen. Danish Environmental Protection Agency. Environmental Project No. 1371 2011.

number of operational variables, including temperature and excess air, that must be manipulated to produce product to particular specifications. The commenter stated, ''HCl regeneration plants have had to regularly modify and adapt operational parameters such as burner temperatures and nozzle types and pressures in order to meet the changing product specifications of the marketplace. The current regulation accounts for such variability by allowing for the setting of 'alternative concentration standards' due to the impact that such operational adjustments may have on Cl_2 emissions. The existing regulation demonstrates EPA's intent to allow HCl regeneration plants the ability to produce marketable products in changing markets and changing operational conditions. The proposed revision would undermine that intent and remove the operational flexibility that is necessary for HCl regeneration facilities to adapt to changing markets.''

Response: We agree with the commenter to the extent the commenter suggests that the basis for the alternative compliance standard in the original MACT was for the purpose of allowing sources to ''produce iron oxide of acceptable quality.'' However, section 112(d)(2) provides that EPA must establish a standard that ensures the maximum reductions of air pollutants subject to section 112, taking into consideration several factors. For existing sources that standard may not be less than the average emission limit achieved by the best performing 12 percent of existing sources or the average emission limitation achieved by the best performing five sources for which EPA could reasonably obtain information where the source category contains fewer than 30 sources. This is referred to as the MACT floor. Section 112 makes no allowance for establishing a standard less stringent than the floor for sources to which the floor applies. (72 FR 61060). For that reason, we believe that we inappropriately promulgated the alternative compliance limit at the time we promulgated the initial MACT standard. While it is true that the changing operational conditions have an effect on Cl_2 emissions, EPA believes there are available techniques for controlling Cl_2 emissions other than the modification of the operational parameters mentioned by the commenter. EPA believes that both a marketable product can be produced and the Cl_2 emission limit can be met. If a facility is unable to meet the Cl_2 emission limit and produce a marketable product by adjusting their operational parameters, our review and analysis of available information indicate that the emission limit for chlorine can be met using available control technologies such as alkaline scrubbers.

Comment: One commenter noted that while EPA asserts that the source-specific alternative concentration provision does not meet the requirements in section 112(d)(2) and (3) of the CAA because MACT standards for existing sources cannot be less stringent than the average emissions limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources), EPA previously promulgated a regulation which allowed an alternative concentration standard. The commenter also stated that the CAA allows EPA the regulatory flexibility to set source-specific concentration standards for particular pollutants.

The commenter also noted that despite recently concluding that no new technology has been developed since the promulgation of the current regulation, and despite no new interpretation of the data supporting the promulgation of the current regulation, EPA has proposed to remove the ''alternative concentration standard'' provision. The commenter claims such a deletion is not merited by the facts nor required by the Clean Air Act, and that the current rule is lawful. The commenter also noted that the existing NESHAP provides an ample margin of safety to protect public health and prevent an adverse environmental effect.

Response: EPA believes that the alternate source specific provision does not meet the requirements in section 112(d)(2) and (3) of the CAA, and the CAA does not allow the regulatory flexibility to set source-specific concentration standards for particular pollutants. We disagree to the extent the commenter is suggesting that because EPA previously promulgated the alternative, it therefore must be consistent with the CAA. Neither the proposed nor final MACT rule provided the legal basis for the alternative and, since that time, the courts have rejected similar provisions in other standards. (72 FR 61060). The commenter cites no specific authority for the statement that the CAA allows EPA to set source-specific concentration standards for particular pollutants.

We also disagree with the commenters statement that in the original MACT rulemaking we concluded that we could set a numerical emission standard for Cl_2 ''so long as there was also the option to set alternative source-specific limits in order to ensure that facilities could actually produce marketable products.'' We drew no such linkage in that rulemaking. We agree with the commenter that we have not identified any new technology to provide further control of chlorine emissions. However, we are not basing this revision on section the 112(d)(6) review of developments in processes and control technologies. Rather, we are making this correction under CAA sections 112(d)(2) & (3) because we believe that the alternative compliance option was improperly promulgated at the time we promulgated the initial MACT standard. Although not relevant to the decision that a less stringent alternative compliance is not appropriate under section 112(d)(2) & (3), we note that the commenter has not claimed that it cannot meet the MACT standard through the use of alkaline scrubbers. The final rule based the standard for chlorine emission control on the use of single stage water scrubbing and the limit of 6 parts per million by volume (ppmv) is based on test data from facilities using that technology. However, if a facility cannot meet the limit using water scrubbing, they still have the option of using an alkaline scrubber to achieve compliance. The EPA stated in 62 FR 49063, ''Wet scrubbing systems that do not use alkaline solution as the collection medium do not effectively control Cl_2 emissions.''

Comment: One commenter stated that, ''EPA must look to the emissions in the industry to determine the MACT floor at the time EPA proposes to amend the rule.'' The commenter also noted that it does not appear that EPA has considered any new data in making the decision to do away with the ''alternative concentration standards.'' The commenter argued that the MACT floor is more than the existing standard of 6 ppmv, and in addition, EPA has the authority under the CAA to account for variability in emissions or operational factors in setting such standards, and cites *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (DC Cir. 2001).

The commenter would like to know how EPA proposes to address such facilities' requests for alternative concentration standards, and how EPA proposes to regulate any facilities with alternative concentration standards.

Response: During the development of the original rule, EPA calculated the MACT floor for existing sources to be 6 ppmv and EPA does not believe the MACT floor would currently be any higher. In this rulemaking, we are not

amending the MACT standard nor re-assessing the MACT floor. Rather, we are removing the provision in the regulation allowing sources to seek a less stringent emission limit than the floor limit. Thus, we do not agree that we need to recalculate the MACT floor. However, we note that the commenter did not provide, and we are not aware of, any information that would indicate that a MACT floor determined 10 years after the original MACT was promulgated would be less stringent, particularly in light of the fact that 3 out of the 5 sources subject to the MACT standard have never indicated that there are compliance issues with that standard. The elimination of the alternative standard from the rule means the rule will no longer allow facilities to request alternative concentration standards.

Comment: One commenter stated that EPA's conclusion that the proposed removal of the ''alternative concentration standard'' provision will have a capital cost in the range of $100,000 to $200,000, cannot be supported by fact. The commenter also noted that in its description of the proposed revision, EPA states that there is no control technology available that is more effective in removing Cl_2 than existing technology already used by HCl regeneration facilities. The commenter stated that EPA's two statements are irreconcilable; how can a facility spend $100,000 to $200,000 to upgrade control equipment with new technology that does not exist? The commenter would like to know what EPA proposes existing facilities do that already have state of the art control technology.

Response: As noted in previous responses, alkaline scrubbers constitute an existing technology that is effective at controlling Cl_2 emissions. We are not suggesting that facilities upgrade to ''new technology'' but rather that they convert at least one of their existing water scrubbers to an alkaline scrubber. The cost range presented in the proposed rule represents the estimated capital cost to upgrade a scrubber from using water to using an alkaline solution, if necessary to meet the emission limit. Based on available information, EPA believes sources can achieve the MACT standard with readily available control technologies (e.g., alkaline scrubbers) at reasonable cost and still produce a marketable product.

V. Summary of Cost, Environmental and Economic Impacts

A. What are the affected sources?

1. Chromium Electroplating and Chromium Anodizing

For the amendments to the Chromium Electroplating NESHAP, the affected sources are each hard chromium electroplating tank, each decorative chromium electroplating tank, and each chromium anodizing tank located at a facility that performs hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

2. Steel Pickling

For the amendments to the Steel Pickling NESHAP, the affected sources are steel pickling and hydrochloric acid regeneration plants that are major sources of HAP.

B. What are the emission reductions?

1. Chromium Electroplating and Chromium Anodizing

Overall, the amendments to the Chromium Electroplating NESHAP will reduce nationwide emissions of chromium compounds by an estimated 224 pounds per year (lbs/yr) from the current levels of 956 lbs/yr down to 732 lbs/yr. For large hard chromium electroplating, the amendments will reduce chromium compound emissions by about 148 lbs/yr from 454 lbs/yr down to 306 pounds. For small hard chromium electroplating, the amendments will reduce chromium compound emissions by an estimated 33 lbs/yr from 223 lbs/yr to 190 lbs/yr. For decorative chromium electroplating, the amendments will reduce chromium compound emissions by an estimated 35 lbs/yr from 222 lbs/yr down to 187 lbs/yr. For chromium anodizing, the amendments will reduce chromium compound emissions by an estimated 8 lbs/yr from 57 lbs/yr down to 49 lbs/yr. The amendments will have negligible impacts on secondary emissions because the additional control equipment that would be required will not significantly impact energy use by the affected facilities.

2. Steel Pickling

We estimate that the amendment to remove the alternative compliance provision for hydrochloric acid regeneration facilities will reduce emissions of chlorine by 15 tpy.

C. What are the cost impacts?

1. Chromium Electroplating and Chromium Anodizing

We estimate that these amendments will achieve 224 pounds reductions in hexavalent chromium emissions, and that the total capital and total annualized cost for these amendments is $8.2 million and $2.4 million, respectively. The overall cost effectiveness is $10,600 per pound of hexavalent chromium emissions reductions. A summary of the estimated costs and reductions of hexavalent chromium emissions are shown in Table 8.

TABLE 8—SUMMARY OF COST IMPACTS FOR CHROMIUM ELECTROPLATING AND ANODIZING ASSOCIATED WITH SURFACE TENSION AND EMISSION LIMIT REQUIREMENTS

Source category or subcategory	Number of affected plants	Capital costs (controls + WAFS + all testing)	Annualized costs (controls + WAFS + all testing), $/yr	Emissions reductions (lbs/yr)	Cost effectiveness (per lb)
Large Hard Chromium Electroplating	57	$6,377,000	$1,686,000	148	$11,400
Small Hard Chromium Electroplating	91	1,424,000	476,000	33	14,600
Decorative Chromium Electroplating	313	163,000	166,000	35	4,800
Chromic Acid Anodizing	74	235,000	51,000	8	6,600
Total	535	8,200,000	2,380,000	224	10,600

Additionally, the total estimated capital and annualized cost for the housekeeping requirements of these amendments is $934,000 and $228,000, respectively.

2. Steel Pickling

For HCl acid regeneration plants, we estimate that the total capital cost for the amendments is between $100,000

and $200,000, depending on whether the existing equipment can be upgraded or will need to be replaced. The annualized costs are estimated to be between $11,419 and $22,837 per year. The estimated cost effectiveness is $761 to $1,522 per ton of HAP (mainly chlorine).

D. What are the economic impacts?

1. Chromium Electroplating and Chromium Anodizing

EPA performed a screening analysis for impacts on affected small entities by comparing compliance costs to average sales revenues by employment size category.[9] This is known as the cost-to-revenue or cost-to-sales ratio, or the ''sales test.'' The ''sales test'' is the impact methodology EPA primarily employs in analyzing small entity impacts as opposed to a ''profits test,'' in which annualized compliance costs are calculated as a share of profits. The sales test is frequently used because revenues or sales data are commonly available for entities impacted by EPA regulations, and profits data normally made available are often not the true profit earned by firms because of accounting and tax considerations. The use of a ''sales test'' for estimating small business impacts for a rulemaking is consistent with guidance offered by EPA on compliance with SBREFA [10] and is consistent with guidance published by the U.S. SBA's Office of Advocacy that suggests that cost as a percentage of total revenues is a metric for evaluating cost increases on small entities in relation to increases on large entities (U.S. SBA, 2010).[11]

Based on the analysis, we estimate that approximately 97 percent of all affected facilities have a cost-to-sales ratio of less than 1 percent. In addition, for approximately 1 percent of all affected facilities, or 9 facilities with fewer than 20 employees, the potential for cost-to-sales impacts may be between 3 and 9 percent. All of these facilities are in the hard chromium electroplating category, with 3 of the facilities in the small hard chromium electroplating category and 6 in the large hard chromium electroplating category. For these categories, because the average sales receipts used for the analysis may understate sales for some facilities and because these facilities are likely to be able to pass cost increases through to their customers, we do not anticipate the final rule to result in firm closures, significant price increases, or substantial profit loss. We conclude that this final rule will not have a significant economic impact on a substantial number of small entities. More information and details of this analysis are provided in the technical document ''Economic Impact Analysis for Risk and Technology Review: Chromium Electroplating and Chromium Anodizing Source Categories,'' which is available in the docket for this final rule.

2. Steel Pickling

Because only one of the approximately 100 facilities incurs any cost for controls and that cost is estimated to be less than 1 percent of sales, no significant price or productivity impacts are anticipated due to these amendments.

E. What are the benefits?

1. Chromium Electroplating and Chromium Anodizing

The estimated reductions in chromium emissions that will be achieved by this rule will provide benefits to public health. The limits will result in significant reductions in the actual and allowable emissions of hexavalent chromium therefore will reduce the actual and potential cancer risks due to emissions of chromium from this source category.

2. Steel Pickling

The estimated reductions in chlorine emissions that will result from this action will provide benefits to public health. The limits will result in reductions in the potential for noncancer health effects due to emissions of these HAP.

VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection requirements related to the Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants MACT standards. However, the OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 63, subpart CCC under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq and assigned OMB Control Number 2060–0419.

The information collection requirements in this rule for the Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks NESHAP have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. The Information Collection Request (ICR) document prepared was assigned EPA ICR number 1611.10. Burden changes associated with these amendments would result from the emission testing requirements and compliance demonstrations being promulgated with today's action. The estimated average burden per response is 9 hours; the frequency of response is one-time for all respondents that must comply with the rule's reporting requirements and the estimated average number of likely respondents per year is 485. The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life ($100,958), a total operation and maintenance component ($0 per year), and a labor cost component (about $152,116 per year). Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

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

[9] *http://www.census.gov/econ/susb/data/susb2002.html.*

[10] The SBREFA compliance guidance to EPA rulewriters regarding the types of small business analysis that should be considered can be found at: *http://www.epa.gov/sbrefa/documents/Guidance-RegFlexAct.pdf.* See Table 2 on page 36 for guidance on interpretations of the magnitude of the cost-to-sales numbers.

[11] U.S. SBA, Office of Advocacy. A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act, Implementing the President's Small Business Agenda and Executive Order 13272, June 2010.

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 today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity 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.

After considering the economic impact 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 rule imposes more stringent emissions limits and lower surface tension requirements. These new requirements and restrictions to the hard and decorative chromium electroplating and chromium anodizing tanks MACT standard will impact small entities, but those impacts have been estimated to be nominal. The emissions limits reflect the level of performance currently being achieved by most facilities, and many facilities currently have emissions that are far below the limits. With regard to the remaining facilities (those that will need to achieve emissions reductions), most of these facilities can achieve the limits at low costs (e.g., by using additional fume suppressants).

The EPA's analysis estimated that 97 percent of the affected entities will have an annualized cost of less than 1 percent of sales. In addition, approximately 1 percent of affected entities, or 9 facilities with fewer than 20 employees, may have cost-to-sales ratios between 3 to 9 percent. All of these facilities are in the hard chromium electroplating category, with 3 of the facilities in the small hard chromium electroplating category and 6 in the large hard chromium electroplating category.

Since our analysis indicates that a small subset of facilities (about 1 percent) may have cost-to-sales ratios greater than 3 percent, we have conducted additional economic impact analyses on this small subset of facilities to better understand the potential economic impacts for these facilities. The additional analyses indicate the estimates of costs-to-sales ratios in the initial analyses are more likely to be overstated rather than understated because the additional analyses indicate that sales are typically higher for these sources than the average value used in the initial analysis.

Moreover, because of the nature of the market, these facilities are likely to be able to pass cost increases through to their customers. As such, we do not anticipate the rule to result in firm closures, or substantial profit loss. More information and details of this analysis are provided in the technical document ''Economic Impact Analysis for Risk and Technology Review: Chromium Electroplating,'' which is available in the docket for this final rule.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The rule will not result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year. The rule imposes no enforceable duties on any State, local, or tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 or 205 of the 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. This action contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This rule 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. None of the facilities subject to this action are owned or operated by State governments and do not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to this rule.

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

This rule will not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect 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.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. However, some of the pollutants addressed by this action may present a disproportionate risk to children.[12] The phase-out of PFOS fume suppressants will help to reduce a disproportionate risk to children. This action will not relax the control measures on existing regulated sources and will result in reductions in cancer risks due to chromium emissions for people of all ages, including children. The EPA's risk assessments (included in the docket for this rule) demonstrate that these regulations, with the amendments being promulgated in today's action, will be health protective.

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 under Executive Order 13211, (66 FR 28355 (May 22, 2001)), because it is not likely to have significant adverse effect on the supply, distribution, or use of energy. This action will not create any new requirements for sources in the energy supply, distribution, or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory

[12] The EPA has not yet determined whether hexavalent chromium poses disproportionate risks to children by acting as a mutagenic carcinogen. The EPA is currently developing an IRIS assessment of hexavalent chromium which likely will address that issue.

activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

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.

To examine the potential for any environmental justice issues that might be associated with two of the source categories associated with today's rule (Hard Chromium Electroplaters and Decorative Chromium Electroplaters), we evaluated the percentages of various social, demographic, and economic groups within the at-risk populations living near the facilities where these source categories are located and compared them to national averages. We did not conduct this type of analysis for the chromic acid anodizing or steel pickling categories because the numbers of people for whom cancer risks were greater than 1-in-1 million due to HAP emissions from these source categories were low.

The analysis indicated that certain minority groups and low-income populations may be disproportionately exposed to emissions from these categories and to any risks that may result due to these emissions because the communities most proximate to facilities within these categories have a higher proportion of these groups than the national demographic profile. We did not, however, identify any vulnerability or susceptibility to risks particular to minority and low income populations from pollutants emitted from this source category.

We determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority low-income, or indigenous populations. Further, after implementation of the provisions of this rule, the public health of all demographic groups will be protected with an ample margin of safety.

The development of demographic analyses to inform the consideration of environmental justice issues in EPA rulemakings is an evolving process. The EPA offers the demographic analyses in this rulemaking as examples of how such analyses might be developed to inform such consideration, with the hope that this will support the refinement and improve utility of such analyses for future rulemakings.

Our analysis of the demographics of the population with estimated risks greater than 1-in-1 million indicates potential disparities in risks between demographic groups, including the African American, Other and Multiracial, Hispanic, Below the Poverty Level, and the Over 25 without a High School Diploma groups. These groups stand to benefit the most from the emission reductions achieved by this rulemaking.

EPA defines ''Environmental Justice'' to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices. To promote meaningful involvement, after the rule was proposed, EPA conducted a webinar to inform the public about the rule and to outline how to submit written comments to the docket. Further stakeholder and public input occurred through public comment and follow-up meetings with interested stakeholders.

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 final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final 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). The final rules will be effective on September 19, 2012.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 15, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Amend § 63.341 by:

■ a. Adding, in alphabetical order, in paragraph (a), definitions for ''affirmative defense,'' ''contains hexavalent chromium,'' ''existing affected source,'' ''new affected source,'' and ''perfluorooctane sulfonic acid (PFOS)-based fume suppressant'';

■ b. Revising in paragraph (a) the definition for ''wetting agent''; and

■ c. Revising paragraph (b)(10).

The added and revised text reads as follows:

§ 63.341 Definitions and nomenclature.

(a) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Contains hexavalent chromium means, the substance consists of, or contains 0.1 percent or greater by weight, chromium trioxide, chromium (VI) oxide, chromic acid, or chromic anhydride.

* * * * *

Existing affected source means an affected hard chromium electroplating tank, decorative chromium electroplating tank, or chromium anodizing tank, the construction or

reconstruction of which commenced on or before February 8, 2012.

* * * * *

New affected source means an affected hard chromium electroplating tank, decorative chromium electroplating tank, or chromium anodizing tank, the construction or reconstruction of which commenced after February 8, 2012.

* * * * *

Perfluorooctane sulfonic acid (PFOS)-based fume suppressant means a fume suppressant that contains 1 percent or greater PFOS by weight.

* * * * *

Wetting agent means the type of commercially available chemical fume suppressant that materially reduces the surface tension of a liquid.

(b) * * *

(10) VR_{tot} = the average total ventilation rate for the three test runs as determined at the outlet by means of the Method 306 or 306A testing specified in appendix A of this part in dscm/min.

■ 3. Amend § 63.342 by:
■ a. Revising paragraph (a);
■ b. Revising paragraph (b)(1);
■ c. Revising paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii);
■ d. Adding paragraphs (c)(1)(iv) and (c)(1)(v);
■ e. Revising paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv);
■ f. Adding paragraphs (c)(2)(vi), (c)(2)(vii), and (c)(2)(viii);
■ g. Revising paragraphs (d)(1) and (d)(2);
■ h. Adding paragraphs (d)(3) and (d)(4);
■ i. Revising paragraph (e)(1);
■ j. Redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(3) and (e)(4), and revising the newly designated paragraph (e)(4);
■ k. Adding a new paragraph (e)(2);
■ l. Adding paragraph (f)(3)(i)(F); and
■ m. Adding Table 2 to read as follows:

§ 63.342 Standards.

(a)(1) At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(2) Each owner or operator of an affected source subject to the provisions of this subpart shall comply with these requirements in this section on and after the compliance dates specified in § 63.343(a). All affected sources are regulated by applying maximum achievable control technology.

(b) * * *

(1) The emission limitations in this section apply during tank operation as defined in § 63.341, and during periods of startup and shutdown as these are routine occurrences for affected sources subject to this subpart. In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert a defense to a claim for civil penalties for violations of such standards that are caused by a malfunction, as defined in 40 CFR 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet the burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(i) To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements of paragraph (b)(1)(ii) of this section, and must prove by a preponderance of evidence that:

(A) The violation was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(B) Repairs were made as expeditiously as possible when exceeded violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(C) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(D) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(E) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(F) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(G) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(H) At all times, the affected sources were operated in a manner consistent with good practices for minimizing emissions; and

(I) A written root cause analysis was prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (i) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmation defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

(c)(1) * * *

(i) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.011 milligrams of total chromium per dry standard cubic meter (mg/dscm) of ventilation air (4.8×10^{-6} grains per dry standard cubic foot (gr/dscf)) for all open surface hard chromium electroplating tanks that are existing affected sources and are located at large hard chromium electroplating facilities; or

(ii) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to

exceed 0.015 mg/dscm (6.6×10^{-6} gr/dscf) for all open surface hard chromium electroplating tanks that are existing affected sources and are located at small, hard chromium electroplating facilities; or

(iii) If a chemical fume suppressant containing a wetting agent is used, not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 40 dynes per centimeter (dynes/cm) (2.8×10^{-3} pound-force per foot (lbf/ft)), as measured by a stalagmometer, or 33 dynes/cm (2.3×10^{-3} lbf/ft), as measured by a tensiometer at any time during tank operation; or

(iv) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.006 mg/dscm of ventilation air (2.6×10^{-6} gr/dscf) for all open surface hard chromium electroplating tanks that are new affected sources; or

(v) After September 21, 2015, the owner or operator of an affected open surface hard chromium electroplating tank shall not add PFOS-based fume suppressants to any affected open surface hard chromium electroplating tank.

(2) * * *

(i) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.011 mg/dscm of ventilation air (4.8×10^{-6} gr/dscf) for all enclosed hard chromium electroplating tanks that are existing affected sources and are located at large hard chromium electroplating facilities; or

(ii) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 mg/dscm (6.6×10^{-6} gr/dscf) for all enclosed hard chromium electroplating tanks that are existing affected sources and are located at small, hard chromium electroplating facilities; or

(iii) If a chemical fume suppressant containing a wetting agent is used, not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 40 dynes/cm (2.8×10^{-3} lbf/ft), as measured by a stalagmometer, or 33 dynes/cm (2.3×10^{-3} lbf/ft), as measured by a tensiometer at any time during tank operation; or

(iv) Not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate determined by using the calculation procedure in § 63.344(f)(1)(i) for all enclosed hard chromium electroplating tanks that are existing affected sources and are located at large hard chromium electroplating facilities; or

* * * * *

(vi) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.006 mg/dscm of ventilation air (2.6×10^{-6} gr/dscf) for all enclosed hard chromium electroplating tanks that are new affected sources; or

(vii) Not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate determined by using the calculation procedure in § 63.344(f)(1)(iii) if the enclosed hard chromium electroplating tank is a new affected source.

(viii) After September 21, 2015, the owner or operator of an affected enclosed hard chromium electroplating tank shall not add PFOS-based fume suppressants to any affected enclosed hard chromium electroplating tank.

(d) * * *

(1) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.007 mg/dscm (3.1×10^{-6} gr/dscf) for all existing decorative chromium electroplating tanks using a chromic acid bath and all existing chromium anodizing tanks; or

(2) Not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.006 mg/dscm (2.6×10^{-6} gr/dscf) for all new or reconstructed decorative chromium electroplating tanks using a chromic acid bath and all new or reconstructed chromium anodizing tanks; or

(3) If a chemical fume suppressant containing a wetting agent is used, not allowing the surface tension of the electroplating or anodizing bath contained within the affected tank to exceed 40 dynes/cm (2.8×10^{-3} lbf/ft), as measured by a stalagmometer or 33 dynes/cm (2.3×10^{-3} lbf/ft), as measured by a tensiometer at any time during tank operation, for all existing, new, or reconstructed decorative chromium electroplating tanks using a chromic acid bath and all existing, new, or reconstructed chromium anodizing tanks; or

(4) After September 21, 2015, the owner or operator of an affected decorative chromium electroplating tank or an affected chromium anodizing tank shall not add PFOS-based fume suppressants to any affected decorative chromium electroplating tank or chromium anodizing tank.

(e) * * *

(1) Each owner or operator of an existing, new, or reconstructed decorative chromium electroplating tank that uses a trivalent chromium bath that incorporates a wetting agent as a bath ingredient is subject to the recordkeeping and reporting requirements of §§ 63.346(b)(14) and 63.347(i), but are not subject to the work practice requirements of paragraph (f) of this section, or the continuous compliance monitoring requirements in § 63.343(c). The wetting agent must be an ingredient in the trivalent chromium bath components purchased as a package.

(2) After September 21, 2015, the owner or operator of an affected decorative chromium electroplating tank using a trivalent chromium bath shall not add PFOS-based fume suppressants to any affected decorative chromium electroplating tank.

* * * * *

(4) Each owner or operator of an existing, new, or reconstructed decorative chromium electroplating tank that had been using a trivalent chromium bath that incorporated a wetting agent and ceases using this type of bath must fulfill the reporting requirements of § 63.347(i)(3) and comply with the applicable emission limitation within the timeframe specified in § 63.343(a)(7).

(f) * * *

(3) * * *

(i) * * *

(F) The plan shall include housekeeping procedures, as specified in Table 2 of this section.

* * * * *

TABLE 2 TO § 63.342—HOUSEKEEPING PRACTICES

For	You must:	At this minimum frequency
1. Any substance used in an affected chromium electroplating or chromium anodizing tank that contains hexavalent chromium.	(a) Store the substance in a closed container in an enclosed storage area or building; AND (b) Use a closed container when transporting the substance from the enclosed storage area.	At all times, except when transferring the substance to and from the container. Whenever transporting substance, except when transferring the substance to and from the container.
2. Each affected tank, to minimize spills of bath solution that result from dragout. Note: this measure does not require the return of contaminated bath solution to the tank. This requirement applies only as the parts are removed from the tank. Once away from the tank area, any spilled solution must be handled in accordance with Item 4 of these housekeeping measures.	(a) Install drip trays that collect and return to the tank any bath solution that drips or drains from parts as the parts are removed from the tank; OR (b) Contain and return to the tank any bath solution that drains or drips from parts as the parts are removed from the tank; OR (c) Collect and treat in an onsite wastewater treatment plant any bath solution that drains or drips from parts as the parts are removed from the tank.	Prior to operating the tank. Whenever removing parts from an affected tank. Whenever removing parts from an affected tank.
3. Each spraying operation for removing excess chromic acid from parts removed from, and occurring over, an affected tank.	Install a splash guard to minimize overspray during spraying operations and to ensure that any hexavalent chromium laden liquid captured by the splash guard is returned to the affected chromium electroplating or anodizing tank.	Prior to any such spraying operation.
4. Each operation that involves the handling or use of any substance used in an affected chromium electroplating or chromium anodizing tank that contains hexavalent chromium.	Begin clean up, or otherwise contain, all spills of the substance. Note: substances that fall or flow into drip trays, pans, sumps, or other containment areas are not considered spills.	Within 1 hour of the spill.
5. Surfaces within the enclosed storage area, open floor area, walkways around affected tanks contaminated with hexavalent chromium from an affected chromium electroplating or chromium anodizing tank.	(a) Clean the surfaces using one or more of the following methods: HEPA vacuuming; Hand-wiping with a damp cloth; Wet mopping; Hose down or rinse with potable water that is collected in a wastewater collection system; Other cleaning method approved by the permitting authority; OR (b) Apply a non-toxic chemical dust suppressant to the surfaces.	At least once every 7 days if one or more chromium electroplating or chromium anodizing tanks were used, or at least after every 40 hours of operating time of one or more affection chromium electroplating or chromium anodizing tank, whichever is later. According to manufacturer's recommendations.
6. All buffing, grinding, or polishing operations that are located in the same room as chromium electroplating or chromium anodizing operations.	Separate the operation from any affected electroplating or anodizing operation by installing a physical barrier; the barrier may take the form of plastic strip curtains.	Prior to beginning the buffing, grinding, or polishing operation.
7. All chromium or chromium-containing wastes generated from housekeeping activities.	Store, dispose, recover, or recycle the wastes using practices that do not lead to fugitive dust and in accordance with hazardous waste requirements.	At all times.

■ 4. Section 63.343 is amended by:
■ a. Revising paragraphs (a)(1), (a)(2), and (a)(4), and adding paragraph (a)(8);
■ b. Revising paragraph (b)(1); and
■ c. Revising paragraphs (c) introductory text, (c)(1)(ii), (c)(2)(ii), (c)(4)(ii), (c)(5)(i), (c)(5)(ii), and (c)(6)(ii).

The added and revised text reads as follows:

§ 63.343 Compliance provisions.

(a)(1) The owner or operator of an existing affected source shall comply with the emission limitations in § 63.342 no later than September 19, 2014.

(2) The owner or operator of a new or reconstructed affected source that has an initial startup after September 19, 2012, shall comply immediately upon startup of the source.

* * * * *

(4) The owner or operator of a new area source (i.e., an area source for which construction or reconstruction was commenced after February 8, 2012, that increases actual or potential emissions of hazardous air pollutants such that the area source becomes a major source must comply with the provisions for new major sources, immediately upon becoming a major source.

* * * * *

(8) After March 19, 2013, the owner or operator of an affected source that is subject to the standards in paragraphs § 63.342(c) or (d) shall implement the housekeeping procedures specified in Table 2 of § 63.342.

(b) *Methods to demonstrate initial compliance.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, an owner or operator of an affected source subject to the requirements of this subpart is required to conduct an initial performance test as required under § 63.7, using the procedures and test methods listed in §§ 63.7 and 63.344.

* * * * *

(c) *Monitoring to demonstrate continuous compliance.* The owner or operator of an affected source subject to the emission limitations of this subpart shall conduct monitoring according to the type of air pollution control technique that is used to comply with the emission limitation. The monitoring required to demonstrate continuous compliance with the emission limitations is identified in this section for the air pollution control techniques expected to be used by the owners or

operators of affected sources. As an alternative to the daily monitoring, the owner or operator of an affected source may install a continuous pressure monitoring system.

* * * * *

(c) * * *

(1) * * *

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh-pad system once each day that any affected source is operating. To be in compliance with the standards, the composite mesh-pad system shall be operated within ±2 inches of water column of the pressure drop value established during the initial performance test, or shall be operated within the range of compliant values for pressure drop established during multiple performance tests.

* * * * *

(2) * * *

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the velocity pressure at the inlet to the packed-bed system and the pressure drop across the scrubber system once each day that any affected source is operating. To be in compliance with the standards, the scrubber system shall be operated within ±10 percent of the velocity pressure value established during the initial performance test, and within ±1 inch of water column of the pressure drop value established during the initial performance test, or within the range of compliant operating parameter values established during multiple performance tests.

* * * * *

(4) * * *

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the fiber-bed mist eliminator, and the control device installed upstream of the fiber bed to prevent plugging, once each day that any affected source is operating. To be in compliance with the standards, the fiber-bed mist eliminator and the upstream control device shall be operated within ±1 inch of water column of the pressure drop value established during the initial performance test, or shall be operated within the range of compliant values for pressure drop established during multiple performance tests.

* * * * *

(5) *Wetting agent-type or combination wetting agent-type/foam blanket fume suppressants.* (i) During the initial performance test, the owner or operator of an affected source complying with the emission limitations in § 63.342 through the use of a wetting agent in the electroplating or anodizing bath shall determine the outlet chromium concentration using the procedures in § 63.344(c). The owner or operator shall establish as the site-specific operating parameter the surface tension of the bath using Method 306B, appendix A of this part, setting the maximum value that corresponds to compliance with the applicable emission limitation. In lieu of establishing the maximum surface tension during the performance test, the owner or operator may accept 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, as the maximum surface tension value that corresponds to compliance with the applicable emission limitation. However, the owner or operator is exempt from conducting a performance test only if the criteria of paragraph (b)(1) of this section are met.

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath. Operation of the affected source at a surface tension greater than the value established during the performance test, or greater than 40 dynes/cm, as measured by a stalagmometer, or 33 dynes/cm, as measured by a tensiometer, if the owner or operator is using this value in accordance with paragraph (c)(5)(i) of this section, shall constitute noncompliance with the standards. The surface tension shall be monitored according to the following schedule:

* * * * *

(6) * * *

(ii) On and after the date on which the initial performance test is required to be completed under § 63.7, the owner or operator of an affected source shall monitor the foam blanket thickness of the electroplating or anodizing bath. Operation of the affected source at a foam blanket thickness less than the value established during the performance test, or less than 2.54 cm (1 inch) if the owner or operator is using this value in accordance with paragraph (c)(6)(i) of this section, shall constitute noncompliance with the standards. The foam blanket thickness shall be measured according to the following schedule:

* * * * *

■ 5. Section 63.344 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing ''and'' from the end of paragraph (b)(1)(iii);

■ c. Removing the period from the end of paragraph (b)(1)(iv) and adding ''; and'' in its place;

■ d. Adding paragraphs (b)(1)(v) through (b)(1)(viii);

■ e. Removing and reserving paragraph (b)(2);

■ f. Revising paragraph (c)(1);

■ g. Revising paragraphs (e)(3)(iii), (e)(3)(iv), and (e)(3)(v);

■ h. Revising paragraphs (e)(4)(ii) and (e)(4)(iv);

■ i. Revising paragraphs (f)(1)(i)(A) and (f)(1)(ii)(A); and

■ j. Adding paragraph (f)(1)(iii).

The added and revised text reads as follows:

§ 63.344 Performance test requirements and test methods.

(a) *Performance test requirements.* Performance tests shall be conducted using the test methods and procedures in this section. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. Performance test results shall be documented in complete test reports that contain the information required by paragraphs (a)(1) through (9) of this section. The test plan to be followed shall be made available to the Administrator prior to the testing, if requested.

* * * * *

(b)(1) * * *

(v) The performance test was conducted after January 25, 1995;

(vi) As of September 19, 2012 the source was using the same emissions controls that were used during the compliance test;

(vii) As of September 19, 2012, the source was operating under conditions that are representative of the conditions under which the source was operating during the compliance test; and

(viii) Based on approval from the permitting authority.

* * * * *

(c) * * *

(1) Method 306 or Method 306A, ''Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Anodizing Operations,'' appendix A of this part shall be used to determine the chromium concentration from hard or decorative chromium electroplating tanks or chromium anodizing tanks. The sampling time and sample volume for each run of Methods 306 and 306A, appendix A of this part shall be at least 120 minutes and 1.70 dscm (60 dscf), respectively. Methods 306 and 306A, appendix A of this part allow the measurement of either total chromium or hexavalent chromium emissions. For the purposes of this standard, sources using chromic acid baths must demonstrate compliance with the emission limits of § 63.342 by measuring the total chromium.

* * * * *

(e) * * *

(3) * * *

(iii) Perform Method 306 or 306A testing and calculate an outlet mass emission rate.

(iv) Determine the total ventilation rate from the affected sources (VR_{inlet}) by using equation 1:

$$VR_{tot} \times \frac{IDA_i}{\sum IA_{total}} = VR_{inlet} \quad (1)$$

where VR_{tot} is the average total ventilation rate in dscm/min for the three test runs as determined at the outlet by means of the Method 306 or 306A testing; IDA_i is the total inlet area for all ducts associated with affected sources; ΣIA_{total} is the sum of all inlet duct areas from both affected and nonaffected sources; and VR_{inlet} is the total ventilation rate from all inlet ducts associated with affected sources.

(v) Establish the allowable mass emission rate of the system (AMR_{sys}) in milligrams of total chromium per hour (mg/hr) using equation 2:

$$\sum VR_{inlet} \times EL \times 60 \text{ minutes/hour} = AMR_{sys} \quad (2)$$

where ΣVR_{inlet} is the total ventilation rate in dscm/min from the affected sources, and EL is the applicable emission limitation from § 63.342 in mg/dscm. The allowable mass emission rate (AMR_{sys}) calculated from equation 2 should be equal to or more than the outlet three-run average mass emission rate determined from Method 306 or 306A testing in order for the source to be in compliance with the standard.

(4) * * *

(ii) Determine the total ventilation rate for each type of affected source ($VR_{inlet,a}$) using equation 3:

$$VR_{tot} \times \frac{IDA_{i,a}}{\sum IA_{total}} = VR_{inlet,a} \quad (3)$$

where VR_{tot} is the average total ventilation rate in dscm/min for the three test runs as determined at the outlet by means of the Method 306 or 306A testing; $IDA_{i,a}$ is the total inlet duct area for all ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation; ΣIA_{total} is the sum of all duct areas from both affected and nonaffected sources; and $VR_{inlet,a}$ is the total ventilation rate from all inlet ducts conveying chromic acid from each type of affected source performing the same operation, or each type of affected source subject to the same emission limitation.

* * * * *

(iv) Establish the allowable mass emission rate of the system (AMR_{sys}) in milligrams of total chromium per hour (mg/hr) using equation 8, including each type of affected source as appropriate:

$$AMR_{hc1} + AMR_{hc2} + AMR_{dc} + AMR_{ca} = AMR_{sys} \quad (8)$$

The allowable mass emission rate calculated from equation 8 should be equal to or more than the outlet three-run average mass emission rate determined from Method 306 or 306A testing in order for the source to be in compliance with the standards.

* * * * *

(f) * * *

(1) * * *

(i)(A) The owner or operator of an enclosed hard chromium electroplating tank that is an existing affected source and is located at a large hard chromium electroplating facility who chooses to meet the mass emission rate standard in § 63.342(c)(2)(iv) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate calculated using equation 9:

$$MAMER = ETSA \times K \times 0.011 \text{ mg/dscm} \quad (9)$$

* * * * *

(ii)(A) The owner or operator of an enclosed hard chromium electroplating tank that is an existing affected source located at a small hard chromium electroplating facility who chooses to meet the mass emission rate standard in § 63.342(c)(2)(v) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass

emission rate calculated using equation 10:

$$MAMER = ETSA \times K \times 0.015 \text{ mg/dscm.} \quad (10)$$

* * * * *

(iii)(A) The owner or operator of an enclosed hard chromium electroplating tank that is a new source who chooses to meet the mass emission rate standard in § 63.342(c)(2)(vii) shall determine compliance by not allowing the mass rate of total chromium in the exhaust gas stream discharged to the atmosphere to exceed the maximum allowable mass emission rate calculated using equation 11:

$$MAMER = ETSA \times K \times 0.006 \text{ mg/dscm.} \quad (11)$$

(B) Compliance with the alternative mass emission limit is demonstrated if the three-run average mass emission rate determined from testing using Method 306 or 306A of appendix A to part 63 is less than or equal to the maximum allowable mass emission rate calculated from equation 11.

■ 6. Amend § 63.346 by revising paragraphs (b)(2),(b)(4) and (b)(13) to read as follows:

§ 63.346 Recordkeeping requirements.

* * * * *

(b) * * *

(2) Records of all maintenance performed on the affected source, the add-on air pollution control device, and monitoring equipment, except routine housekeeping practices;

* * * * *

(4) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.342(a)(1), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation;

* * * * *

(13) For sources using fume suppressants to comply with the standards, records of the date and time that fume suppressants are added to the electroplating or anodizing bath and records of the fume suppressant manufacturer and product name;

* * * * *

■ 7. Amend § 63.347 by:

■ a. Adding paragraph (f)(3);

■ b. Redesignating paragraphs (g)(3)(xii) and (g)(3)(xiii) as (g)(3)(xiii) and (g)(3)(xiv), respectively, and adding a new paragraph (g)(3)(xii); and

■ c. Revising paragraphs (h)(2)(i) introductory text and (h)(2)(i)(A) to read as follows:

§ 63.347 Reporting requirements.

* * * * *

(f) * * *

(3)(i) Within 60 days after the date of completing each performance test (defined in § 63.2) as required by this subpart, you must submit the results of the performance tests, including any associated fuel analyses, required by this subpart to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (*www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using test methods that are not listed on the ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

* * * * *

(g) * * *

(3) * * *

(xii) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.342(a)(1), including actions taken to correct a malfunction.

(xiii) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

(xiv) The date of the report.

* * * * *

(h) * * *

(2) * * *

(i) If either of the following conditions is met, semiannual reports shall be prepared and submitted to the Administrator:

(A) The total duration of excess emissions (as indicated by the monitoring data collected by the owner or operator of the affected source in accordance with § 63.343(c)) is 1 percent or greater of the total operating time for the reporting period; or

* * * * *

■ 8. Amend Table 1 to Subpart N by:

■ a. Adding in alphanumerical order entries 63.1(a)(5), 63.1(a)(7)–(9), 63.1(a)(12), 63.1(c)(3)–(4), 63.4(a)(1)–(2), 63.4(a)(3)–(5), 63.4(b)–(c), 63.5(b)(2), 63.5(c), 63.6(c)(3)–(4), 63.6(d), 63.6(e)(1)–(3), 63.6(h)(1), 63.6(h)(2), 63.6(i)(15), 63.7(a)(2)(i)–(viii), 63.7(a)(4), 63.7(e)(1), 63.7(e)(2)–(4), 63.7(g)(2), 63.8(a)(3), and 63.9(h)(4).

■ b. Removing entries 63.1(a)(7) and 63.1 (a)(8), 63.1(a)(12)—(a)(14), 63.1(c)(4), 63.4, 63.6(e), 63.6(h), 63.7(a)(2)(i)–(vi), and 63.7(e).

■ c. Revising entries 63.1(b)(2), 63.5(b)(5), 63.6(b)(6), and 63.9(b)(3),

The added and revised text reads as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
* * *	* * *	* * * *
63.1(a)(5)	No	[Reserved]
* * *	* * *	* * * *
63.1(a)(7)–(9)	No	[Reserved]
* * *	* * *	* * * *
63.1(a)(12)	Yes	
* * *	* * *	* * * *
63.1(b)(2)	No	[Reserved]
* * *	* * *	* * * *
63.1(c)(3)–(4)	No	[Reserved]
* * *	* * *	* * * *
63.4(a)(1)–(2)	Yes.	
63.4(a)(3)–(5)	No	[Reserved]
63.4(b)–(c)	Yes.	
* * *	* * *	* * * *
63.5(b)(2)	No	[Reserved]
* * *	* * *	* * * *
63.5(b)(5)	No	[Reserved]
* * *	* * *	* * * *
63.5(c)	No	[Reserved]
* * *	* * *	* * * *
63.6(b)(6)	No	[Reserved]
* * *	* * *	* * * *
63.6(c)(3)–(4)	No	[Reserved]
* * *	* * *	* * * *
63.6(d)	No	[Reserved]
63.6(e)(1)–(3)	No	§ 63.342(f) of subpart N contains work practice standards (operation and maintenance requirements) that override these provisions.
* * *	* * *	* * * *
63.6(h)(1)	No	SSM Exception
63.6(h)(2)	No	Subpart N does not contain any opacity or visible emission standards.
* * *	* * *	* * * *
63.6(i)(15)	No	[Reserved]
* * *	* * *	* * * *
63.7(a)(2)(i)–(viii)	No	[Reserved]
* * *	* * *	* * * *
63.7(a)(4)	Yes	
* * *	* * *	* * * *
63.7(e)(1)	No	See § 63.344(a). Any cross reference to § 63.7(e)(1) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.344(a).
63.7(e)(2)–(4)	Yes	Subpart N also contains test methods specific to affected sources covered by that subpart.
* * *	* * *	* * * *
63.7(g)(2)	No	[Reserved]
* * *	* * *	* * * *
63.8(a)(3)	No	[Reserved]
* * *	* * *	* * * *
63.9(b)(3)	No	[Reserved]
* * *	* * *	* * * *
63.9(h)(4)	No	[Reserved]

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N—Continued

General provisions reference	Applies to subpart N	Comment
* * *	* * *	* * *

Subpart CCC—[AMENDED]

■ 9. Section 63.1155 is amended by adding paragraph (d) to read as follows:

§ 63.1155 Applicability.

* * * * *

(d) In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by a malfunction, as defined in § 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet the burden of proving all the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a standard, the owner or operator must timely meet the reporting requirements of paragraph (d)(2) of this section, and must prove by a preponderance of evidence that:

(i) The violation was caused by a sudden, infrequent, and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal and usual manner; and could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and did not stem from any activity or event that could have been foreseen and avoided, or planned for; and was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when exceeded violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(iv) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the violation on ambient air quality, the environment, and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the violation were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the violation resulting from the malfunction event at issue. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Report.* The owner of operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (d)(1) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmation defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

■ 10. Section 63.1156 is amended by adding in alphabetical order a definition for ''affirmative defense'' to read as follows:

§ 63.1156 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or a defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

■ 11. Section 63.1157 is amended by revising paragraph (b)(2) to read as follows:

§ 63.1157 Emission standards for existing sources.

* * * * *

(b) * * *

(2) In addition to the requirement of paragraph (b)(1) of this section, no owner or operator of an existing plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain chlorine (Cl_2) in a concentration in excess of 6 ppmv.

■ 12. Section 63.1159 is amended by adding paragraph (c) to read as follows:

§ 63.1159 Operational and equipment standards for existing, new, or reconstructed sources.

* * * * *

(c) *General duty to minimize emissions.* At all times, each owner or operator must operate and maintain any affected source subject to the requirements of this subpart, including associated air pollution control equipment and monitoring equipment in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 13. Section 63.1160 is amended by revising paragraph (b) to read as follows:

§ 63.1160 Compliance dates and maintenance requirements.

* * * * *

(b) *Maintenance requirements.* (1) The owner or operator shall prepare an

operation and maintenance plan for each emission control device to be implemented no later than the compliance date. The plan shall be incorporated by reference into the source's title V permit. All such plans must be consistent with good maintenance practices, and, for a scrubber emission control device, must at a minimum:

(i) Require monitoring and recording the pressure drop across the scrubber once per shift while the scrubber is operating in order to identify changes that may indicate a need for maintenance;

(ii) Require the manufacturer's recommended maintenance at the recommended intervals on fresh solvent pumps, recirculating pumps, discharge pumps, and other liquid pumps, in addition to exhaust system and scrubber fans and motors associated with those pumps and fans;

(iii) Require cleaning of the scrubber internals and mist eliminators at intervals sufficient to prevent buildup of solids or other fouling;

(iv) Require an inspection of each scrubber at intervals of no less than 3 months with:

(A) Cleaning or replacement of any plugged spray nozzles or other liquid delivery devices;

(B) Repair or replacement of missing, misaligned, or damaged baffles, trays, or other internal components;

(C) Repair or replacement of droplet eliminator elements as needed;

(D) Repair or replacement of heat exchanger elements used to control the temperature of fluids entering or leaving the scrubber; and

(E) Adjustment of damper settings for consistency with the required air flow.

(v) If the scrubber is not equipped with a viewport or access hatch allowing visual inspection, alternate means of inspection approved by the Administrator may be used.

(vi) The owner or operator shall initiate procedures for corrective action within 1 working day of detection of an operating problem and complete all corrective actions as soon as practicable. Procedures to be initiated are the applicable actions that are specified in the maintenance plan. Failure to initiate or provide appropriate repair, replacement, or other corrective action is a violation of the maintenance requirement of this subpart.

(vii) The owner or operator shall maintain a record of each inspection, including each item identified in paragraph (b)(2)(iv) of this section, that is signed by the responsible maintenance official and that shows the date of each inspection, the problem identified, a description of the repair, replacement, or other corrective action taken, and the date of the repair, replacement, or other corrective action taken.

(2) The owner or operator of each hydrochloric acid regeneration plant shall develop and implement a written maintenance program. The program shall require:

(i) Performance of the manufacturer's recommended maintenance at the recommended intervals on all required systems and components;

(ii) Initiation of procedures for appropriate and timely repair, replacement, or other corrective action within 1 working day of detection; and

(iii) Maintenance of a daily record, signed by a responsible maintenance official, showing the date of each inspection for each requirement, the problems found, a description of the repair, replacement, or other action taken, and the date of repair or replacement.

■ 14. Section 63.1161 is amended by:
■ a. Revising paragraph (a); and
■ b. Removing and reserving paragraph (c)(2).

§ 63.1161 Performance testing and test methods.

(a) *Demonstration of compliance.* The owner or operator shall conduct an initial performance test for each process or emission control device to determine and demonstrate compliance with the applicable emission limitation according to the requirements in § 63.7 of subpart A of this part and in this section. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 15. Section 63.1164 is amended by:
■ a. Revising paragraph (a); and
■ b. Revising paragraph (c).

§ 63.1164 Reporting requirements.

(a) *Reporting results of performance tests.* Within 60 days after the date of completing each performance test (defined in § 63.2), as required by this subpart you must submit the results of the performance tests, including any associated fuel analyses, required by this subpart to the EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (*www.epa.gov/;cdx*). Performance test data must be submitted in the file format generated through use of the EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using test methods that are not listed on the ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

* * * * *

(c) *Reporting malfunctions.* The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded shall be stated in a semiannual report. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1159(c), including actions taken to correct a malfunction. The report, to be certified by the owner or operator or other responsible official, shall be submitted semiannually and delivered or postmarked by the 30th day following the end of each calendar half.

■ 16. Section 63.1165 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Revising paragraph (a)(4);
■ c. Removing paragraph (a)(5), and redesignating paragraphs (a)(6) through (a)(11) as (a)(5) through (a)(10).

The revisions read as follows:

§ 63.1165 Recordkeeping requirements.

(a) * * *

(1) The occurrence and duration of each malfunction of operation (*i.e.,* process equipment);

* * * * *

(4) Actions taken during periods of malfunction to minimize emissions in accordance with § 63.1259(c) and the dates of such actions (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation);

* * * * *

■ 17. Table 1 to Subpart CCC is amended by:

■ a. Removing entry 63.6(a)–(g);

■ b. Adding entry 63.6(a)–(d) in alphanumerical order;

■ c. Adding entries 63.6(e)(1)(i), 63.6(e)(1)(ii), 63.6(e)(1)(iii), 63.6(e)(2), 63.6(e)(3), 63.6(f)(1), 63.6(f)(2)–(3), and 63.6(g) in alphanumerical order;

■ d. Removing entry 63.7–63.9;

■ e. Adding entries 63.7, 63.8(a)–(c), 63.8(d)(1)–(2), 63.8(d)(3), and 63.8(e)–(f) in alphanumerical order;

■ f. Removing entry 63.10(a)–(c);

■ g. Adding entries 63.10(a), 63.10(b)(1), 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), 63.10(b)(2)(iv)–(v), 63.10(b)(2)(vi)–(xiv), 63.10(b)(3), 63.10(c)(1)–(9), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12)–(14), and 63.10(c)(15) in alphanumerical order;

■ h. Removing entry 63.10(d)(4)–(5); and

■ i. Adding entries 63.10(d)(4) and 63.10(d)(5) in alphanumerical order.

The additions read as follows:

TABLE 1 TO SUBPART CCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CCC

Reference	Applies to subpart CCC	Explanation
* *	*	* * * *
63.6 (a)–(d)	Yes.	
63.6(e)(1)(i)	No	See § 63.1259(c) for general duty requirement. Any cross-reference to § 63.6(e)(1)(i) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1259(c).
63.6(e)(1)(ii)	No.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	No	Section reserved.
63.6(e)(3)	No.	
63.6(f)(1)	No.	
63.6(f)(2)–(3)	Yes.	
63.6(g)	Yes.	
* *	*	* * * *
63.7	Yes.	
63.8(a)–(c)	Yes.	
63.8(d)(1)–(2)	Yes.	
63.8(d)(3)	Yes, except for last sentence.	
63.8(e)–(f)	Yes.	
* *	*	* * * *
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No	See § 63.1265(a)(1) for recordkeeping of occurrence and duration of malfunctions. See § 63.1265(a)(4) for recordkeeping of actions taken during malfunction. Any cross-reference to § 63.10(b)(2)(ii) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1265(a)(1).
63.10(b)(2)(iii)	Yes.	
63.10(b)(2)(iv)–(b)(2)(v)	No.	
63.10(b)(2)(vi)–(b)(2)(xiv)	Yes.	
63.10(b)(3)	Yes.	
63.10(c)(1)–(9)	Yes.	
63.10(c)(10)	No	See § 63.1164(c) for reporting malfunctions. Any cross-reference to § 63.10(c)(10) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1164(c).
63.10(c)(11)	No	See § 63.1164(c) for reporting malfunctions. Any cross-reference to § 63.10(c)(11) in any other general provision incorporated by reference shall be treated as a cross-reference to § 63.1164(c).
63.10(c)(12)–(c)(14)	Yes.	
63.10(c)(15)	No.	
63.10(d)(4)	Yes.	
63.10(d)(5)	No.	
* *	*	* * * *

■ 18. Amend Appendix A to part 63, Method 306B by:

■ a. Revising paragraph 1.2;

■ b. Revising paragraph 6.1;

■ c. Revising paragraphs 11.1 through 11.1.3; and

■ d. Revising paragraph 11.2.2.

■ The added and revised text reads as follows:

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

METHOD 306B—SURFACE TENSION MEASUREMENT FOR TANKS USED AT DECORATIVE CHROMIUM ELECTROPLATING AND CHROMIUM ANODIZING FACILITIES

* * * * *

1.0 Scope and Application

* * * * *

1.2 Applicability. This method is applicable to all chromium electroplating and chromium anodizing operations, and continuous chromium plating at iron and steel facilities where a wetting agent is used in the tank as the primary mechanism for reducing emissions from the surface of the plating solution.

* * * * *

6.0 Equipment and Supplies

6.1 Stalagmometer. Any commercially available stalagmometer or equivalent surface tension measuring device may be used to measure the surface tension of the plating or anodizing tank liquid provided the procedures specified in Section 11.1.2 are followed.

* * * * *

11.0 Analytical Procedure

11.1 Procedure. The surface tension of the tank bath may be measured using a tensiometer, stalagmometer, or any other equivalent surface tension measuring device for measuring surface tension in dynes per centimeter.

11.1.1 If a tensiometer is used, the procedures specified in ASTM Method D 1331–89 must be followed.

11.1.2 If a stalagmometer is used, the procedures specified in Sections 11.1.2.1 through 11.1.2.3 must be followed.

11.1.2.1 Check the stalagmometer for visual signs of damage. If the stalagmometer appears to be chipped, cracked, or otherwise in disrepair, the instrument shall not be used.

11.1.2.2 Using distilled or deionized water and following the procedures provided by the manufacturer, count the number of drops corresponding to the distilled/deionized water liquid volume between the upper and lower etched marks on the stalagmometer. If the number of drops for the distilled/deionized water is not within ±1 drop of the number indicated on the instrument, the stalagmometer must be cleaned, using the procedures specified in Section 11.1.3 of this method, before using the instrument to measure the surface tension of the tank liquid.

11.1.2.2.1 If the stalagmometer must be cleaned, as indicated in Section 11.1.2.2, repeat the procedure specified in Section 11.1.2.2 before proceeding.

11.1.2.2.2 If, after cleaning and performing the procedure in Section 11.1.2.2, the number of drops indicated for the distilled/deionized water is not within ±1 drop of the number indicated on the instrument, either use the number of drops corresponding to the distilled/deionized water volume as the reference number of drops, or replace the instrument.

11.1.2.3 Determine the surface tension of the tank liquid using the procedures specified by the manufacturer of the stalagmometer.

11.1.3 *Stalagmometer cleaning procedures.* The procedures specified in Sections 11.1.3.1 through 11.1.3.10 shall be used for cleaning a stalagmometer, as required by Section 11.1.2.2.

11.1.3.1 Set up the stalagmometer on its stand in a fume hood.

11.1.3.2 Place a clean 150 (mL) beaker underneath the stalagmometer and fill the beaker with reagent grade concentrated nitric acid.

11.1.3.3 Immerse the bottom tip of the stalagmometer (approximately 1 centimeter (0.5 inches)) into the beaker.

11.1.3.4 Squeeze the rubber bulb and pinch at the arrow up (1) position to collapse.

11.1.3.5 Place the bulb end securely on top end of stalagmometer and carefully draw the nitric acid by pinching the arrow up (1) position until the level is above the top etched line.

11.1.3.6 Allow the nitric acid to remain in stalagmometer for 5 minutes, then carefully remove the bulb, allowing the acid to completely drain.

11.1.3.7 Fill a clean 150 mL beaker with distilled or deionized water.

11.1.3.8 Using the rubber bulb per the instructions in Sections 11.1.3.4 and 11.1.3.5, rinse and drain stalagmometer with deionized or distilled water.

11.1.3.9 Fill a clean 150 mL beaker with isopropyl alcohol.

11.1.3.10 Again using the rubber bulb per the instructions in Sections 11.1.3.4 and 11.1.3.5, rinse and drain stalagmometer twice with isopropyl alcohol and allow the stalagmometer to dry completely.

11.2 * * *

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11.2.2 If a measurement of the surface tension of the solution is above the 40 dynes per centimeter limit when measured using a stalagmometer, above 33 dynes per centimeter when measured using a tensiometer, or above an alternate surface tension limit established during the performance test, the time interval shall revert back to the original monitoring schedule of once every 4 hours. A subsequent decrease in frequency would then be allowed according to Section 11.2.1.

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Part III

Department of Commerce

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey off the Central Coast of California, November to December, 2012; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC072

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey off the Central Coast of California, November to December, 2012

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory of Columbia University (L–DEO), in cooperation with the Pacific Gas and Electric Company (PG&E), for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey off the central coast of California, November to December, 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to L–DEO and PG&E to incidentally harass, by Level B harassment only, 25 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than October 15, 2012.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, 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.Goldstein@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.

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#applications* 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 containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The National Science Foundation (NSF), which owns the R/V *Marcus G. Langseth,* has prepared a draft ''Environmental Assessment Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Marine Seismic Survey in the Pacific Ocean off Central California, 2012'' (EA). NSF's EA incorporates a draft ''Environmental Assessment of Marine Geophysical Surveys by the R/V *Marcus G. Langseth* for the Central California Seismic Imaging Project,'' prepared by Padre Associates, Inc., on behalf of NSF, PG&E, and L–DEO, which is also available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371(a)(5)(D)), directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted 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 subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 17, 2012, NMFS received an application from the L–DEO and PG&E requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a marine seismic survey within the U.S. Exclusive Economic Zone off the central coast of California during November to December, 2012. NMFS received a revised application on August 31, 2012. The updated IHA application reflects revisions to the proposed project that have resulted from discussions between NMFS and the applicant during the MMPA consultation process, as well as other Federal and State regulatory requirements and include the elimination of portions of the originally planned survey area (specifically Survey Box 3) and the splitting of the proposed project into two years, and the shortening of the 2012 work window to November and December. Additionally, PG&E has agreed to operationally and financially support the design and implementation of a comprehensive monitoring, stranding response, and adaptive management plan that will support real-time decision making to reduce impacts to the Morro Bay stock of harbor porpoises (*Phocoena phocoena*). L–DEO and PG&E plan to

use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to collect seismic data as part of the ''Offshore Central Coastal California Seismic Imaging Project'' located in the central area of San Luis Obispo County, California.

PG&E proposes to conduct a high energy seismic survey in the vicinity of the Diablo Canyon Power Plant and known offshore fault zones near the power plant. The observations will be interpreted in the context of global synthesis of observations bearing on earthquake rupture geometries, earthquake displacements, fault interactions, and fault evolution. Estimating the limits of future earthquake ruptures is becoming increasingly important as seismic hazard maps are based on geologists' maps of active faults and, locally, the Hosgri Fault strikes adjacent to one of California's major nuclear power plants. In addition to the proposed operations of the seismic airgun array and hydrophone streamer, L–DEO and PG&E intend to operate a multibeam echosounder and a sub-bottom profiler continuously throughout the survey.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities and L–DEO and PG&E have requested an authorization to take 25 species of marine mammals by Level B harassment. Take is not expected to result from the use of the multibeam echosounder or sub-bottom profiler, for reasons discussed in this notice; nor is take expected to result from collision with the source vessel because it is a single vessel moving at a relatively slow speed (4.6 knots [kts]; 8.5 kilometers per hour [km/hr]; 5.3 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 50 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Proposed Specified Activity

Project Purpose

PG&E proposes to conduct a high energy seismic survey in the vicinity of the Diablo Canyon Power Plant and known offshore fault zones near the power plant (see Figure 1 of the IHA application). The project, as proposed by L–DEO and PG&E, consists of deploying seismic or sound sources and receivers at onshore and offshore locations to generate data that can be used to improve imaging of major geologic structures and fault zones in the vicinity of the Diablo Canyon Power Plant. The details of the proposed seismic studies are outlined in a Science Plan submitted to the National Science Foundation (NSF) by L–DEO, University of Nevada, and Scripps Institution of Oceanography. NSF, as owner of the *Langseth* will serve as the lead Federal agency and will ensure the approval of the proposed Science Plan is in compliance with the National Environmental Policy Act (NEPA) of 1969.

These seismic studies would provide additional insights of any relationships or connection between the known faults as well as enhance knowledge of offshore faults in proximity to the central coast of California and the Diablo Canyon Power Plant. The proposed deep penetrating (10 to 15 kilometers [km] or 6 to 9 miles [mi]), high energy seismic survey (energy greater than 2 kilo Joule) would complement a previously completed shallow (less than 1 km [0.6 mi]), low energy (less than 2 kilo Joule) three-dimensional (3D) seismic reflection survey.

The objectives of the proposed high energy 3D seismic survey are to:

- Record high resolution two-dimensional (2D) and 3D seismic reflection profiles of major geologic structures and fault zones in the vicinity of the central coast of California and Diablo Canyon Power Plant.
- Obtain high-resolution deep-imaging (greater than 1 km [0.6 mi]) of the Hosgri and Shoreline fault zones in the vicinity of the Diablo Canyon Power Plant to constrain fault geometry and slip rate (scheduled for the seismic survey activities in 2013).
- Obtain high-resolution, deep-imaging of the intersection of the Hosgri and Shoreline fault zones near Point Buchon.
- Obtain high-resolution, deep-imaging of the geometry and slip rate of the Los Osos fault, as well as the intersection of the Hosgri and Los Osos fault zones in Estero Bay.
- Augment the current regional seismic database for subsequent use and analysis through the provision of all data to the broader scientific and safety community.

The studies require the collection of data over a long period of time. However, the project timeframe is limited to fall and winter months to minimize environmental impacts to the greatest extent feasible. L–DEO and PG&E are proposing to conduct the studies 24 hours a day for 7 days a week. This schedule is designed to reduce overall air emissions, length of time for operation in the water thereby reducing impacts to marine wildlife, commercial fishing, and other area users. PG&E will work with environmental agencies to appropriately address the balancing of public health and safety and environmental concerns during the conduct of these studies.

Survey Details

The proposed survey involves both marine (offshore) and land (onshore) activities. The offshore components consist of operating a seismic survey vessel and support/monitoring vessels within the areas shown in Figure 1 of the IHA application and transiting between the four different survey box areas extending between the mouth of the Santa Maria River and Estero Bay. The seismic survey vessel would tow a series of sound-generating airguns and sound-recording hydrophones along pre-determined shore parallel and shore-perpendicular transects to conduct deep (10 to 15 km [6 to 9 mi]) seismic reflection profiling of major geologic structures and fault zones in the vicinity of the Diablo Canyon Power Plant.

The offshore part of the survey activities include the placement of a limited number of seafloor geophones (e.g., Fairfield Z700 nodal units) into nearshore waters.

The planned seismic survey (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 3,565.8 km (1,925.4 nmi) (1,417.6 km [765.4 nmi] for Survey Box 4 and 2,148.2 km [1,159.9 nmi] for Survey Box 2) of transect lines (including turns) in the survey area off the central coast of California (see Figure 2 of the IHA application). In addition to the operations of the airgun array, a Kongsberg EM 122 multibeam echosounder and Knudsen Chirp 3260 sub-bottom profiler will also be operated from the *Langseth* continuously throughout the cruise. There will be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In L–DEO and PG&E's estimated take calculations, 25% has been added for those additional operations. Detailed descriptions of the proposed actions for each component are provided below in this document.

Vessel Movements

The tracklines for the 3D seismic survey will encompass an area of

approximately 740.52 km² (215.9 square nautical miles [nmi²]). The 2012 project area is divided into two ''primary target areas'' (Survey Boxes 2 and 4) are described below and shown in Figure 2 of the IHA application. The offshore (vessel) survey would be conducted in both Federal and State waters and water depths within the proposed survey areas ranging from 0 to over 400 m (1,300 ft). The State Three-Mile Limit is identified in Figure 1 of the IHA application. The Point Buchon Marine Protected Area lies within portions of the survey area. In addition, the Monterey Bay National Marine Sanctuary, a Federally-protected marine sanctuary that extends northward from Cambria to Marine County, is located to the north and outside of the proposed project area.

Survey Box 2 (Survey area from Estero Bay to offshore Santa Maria River Mouth):

- Area: 406.04 km² (118.4 nmi²);
- Total survey line length is 2,148.2 km (1,159.9 nmi); and
- Strike line surveys along the Hosgri fault zone and Shoreline, Hosgri, and Los Osos fault intersections.

Survey Box 4 (Estero Bay):

- Area: 334.48 km² (97.5 nmi²);
- Total survey line length is 1,417.6 km (765.4 nmi);
- Dip line survey across the Hosgri and Los Osos fault zones in Estero Bay.

Figure 2 of the IHA application depicts the proposed survey transit lines. These lines depict the survey lines as well as the turning legs. The full seismic array is firing during the straight portions of the track lines as well as the initial portions of the run-out (offshore) sections and later portions of the run-in (inshore) sections. During turns and most of the initial portion of the run-ins, there will only be one airgun firing (i.e., mitigation airgun). Assuming a daily survey rate of approximately 8.3 km/hour (km/hr) (4.5 knots [kts] for 24/7 operations), the Survey Box 2 is expected to take approximately 14 days and approximately 9.25 days for Survey Box 4. When considering mobilization, demobilization, refueling, equipment maintenance, weather, marine mammal activity, and other contingencies, the proposed survey is expected to be completed in 49.25 days.

Mobilization and Demobilization

The offshore equipment and vessels for the proposed 3D marine seismic survey are highly specialized and typically no seismic vessels are located in California. The proposed seismic survey vessel (R/V *Marcus G. Langseth*) is currently operating on the U.S. west coast and is available to conduct the proposed seismic survey work.

The *Langseth* would transit south prior to the start of survey operations (approximately October 15 through December 31, 2012, with active airgun survey operations starting approximately November 1, 2012). Once the vessel has arrived in the project area, the survey crew, any required equipment, and support provisions would be transferred to the vessel. Larger equipment, if required, would need to be loaded onboard the vessel at either Port of San Francisco/Oakland or Port Hueneme. The proposed survey vessel is supported by two chase/scout boats, each with three Protected Species Observers (PSOs) and a third support boat that will provide logistical support to the *Langseth* or chase boats. This support vessel will also serve as a relief vessel for either of the two chase boats as required or equivalent. Any additional scout/monitoring vessels required for the proposed project will be drawn from local vessel operators. Upon completion of the offshore survey operations, the survey crew would be transferred to shore and the survey vessel would transit out to the proposed project area.

Nearshore operations would be conducted using locally available vessels such as the M/V *Michael Uhl* (*Michael Uhl*) or equivalent vessel. Equipment, including the geophones and cables, would be loaded aboard the *Michael Uhl* in Morro Bay Harbor and transferred to the offshore deployment locations. Following deployment and recovery of the geophones and cables, they would be transferred back to Morro Bay Harbor for transport offsite.

During onshore operations, receiver line equipment would be deployed by foot-based crews supported by four-wheel drive vehicles or small vessel. Once the proposed project has been completed, the equipment would demobilize from the area by truck.

Offshore Survey Operations

The proposed offshore seismic survey would be conducted with vessels specifically designed and built to conduct such surveys. PG&E has selected the *Langseth,* which is operated by L–DEO. The following outlines the general specifications for the *Langseth* and the support vessels needed to complete the proposed offshore seismic survey.

In water depths from 30 to 305 m (100 to greater than 1,000 ft), the *Langseth* will tow four hydrophone streamers with a length of approximately 6 km (3.2 nmi). The intended tow depth of the streamers is approximately 9 m (29.5 ft). Flotation is provided on each streamer as well as streamer recovery devices. The streamer recovery devices are activated when the streamer sinks to a pre-determined depth (e.g., 50 m [164 ft]) to aid in recovery.

- Primary vessel—the *Langseth* is 71.5 m (235 ft) in length, and is outfitted to deploy/retrieve hydrophone streamers and airgun array, air compressors for the airgun array, and survey recording facilities.
- Two Chase/Scout boats—22.9 to 41.2 m (75 to 135 ft) in length and will be around the *Langseth* to observe potential obstructions, conduct additional marine mammal monitoring and support deployment of seismic equipment.
- Third support vessel–will be approximately 18.3 to 25.9 m (60 to 85 ft) in length and would act as a support boat for the *Langseth* and the two other chase/scout and would provide relief to either chase/scout boat as required.
- A nearshore work vessel (e.g., *Michael Uhl*) approximately 50 m (150 ft) in length would be used to deploy and retrieve seafloor geophones in the shallow water (0 to 20 m) zone.
- Monitoring aircraft—Partenavia P68–OBS ''Observer,'' a high-wing, twin-engine plane or equivalent aircraft is 9.5 m (31 ft) in length and has a wingspan of 12 m (39 ft) with a carrying capacity of six persons. The aircraft has two ''bubble'' observation windows, a glass nose for clear observation, and will be equipped with communication and safety equipment sufficient to support the proposed operations. The aircraft would be used to perform aerial surveys of marine mammals.

Vessel Specifications

The *Langseth,* a seismic research vessel owned by the NSF, will tow the 36 airgun array, as well as the hydrophone streamer, along predetermined lines (see Figure 2 of the IHA application). When the *Langseth* is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to three degrees per minute (2.5 km [1.5 mi]). Thus, the maneuverability of the vessel is limited during operations with the streamer. The vessel would ''fly'' the appropriate U.S. Coast Guard-approved day shapes (mast head signals used to communicate with other vessels) and display the appropriate lighting to designate the vessel has limited maneuverability.

The vessel has a length of 71.5 m (235 ft); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834. The *Langseth* was designed as a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from

the airgun array. The ship is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers directly. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800 hp bowthruster, which is not used during seismic acquisition. The *Langseth's* operation speed during seismic acquisition is typically 7.4 to 9.3 km per hour (hr) (km/hr) (4 to 5 knots [kts]). When not towing seismic survey gear, the *Langseth* typically cruises at 18.5 km/hr (10 kts). The *Langseth* has a range of 25,000 km (13,499 nmi) (the distance the vessel can travel without refueling).

The vessel also has an observation tower from which Protected Species Visual Observers (PSVO) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the PSVO's eye level will be approximately 21.5 m (71 ft) above sea level providing the PSVO an unobstructed view around the entire vessel. More details of the *Langseth* can be found in the IHA application.

Acoustic Source Specifications

Seismic Airguns

The *Langseth* will deploy a 36-airgun array, consisting of two 18 airgun sub-arrays. Each sub-array will have a volume of approximately 3,300 cubic inches (in^3). The airgun array will consist of a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch (psi). The 18 airgun sub-arrays will be configured as two identical linear arrays or ''strings'' (see Figure 3 and 4 of the IHA application). Each string will have 10 airguns, the first and last airguns in the strings are spaced 16 m (52.5 ft) apart. Of the 10 airguns, nine airguns in each string will be fired simultaneously (1,650 in^3), whereas the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The sub-arrays would be fired alternately during the survey. The two airgun sub-arrays will be distributed across an area of approximately 12 x 16 m (40 x 52.5 ft) behind the *Langseth* and will be towed approximately 140 m (459.3 ft) behind the vessel. Discharge intervals depend on both the ship's speed and Two Way Travel Time recording intervals. The shot interval will be 37.5 m (123) during the study. The shot interval will be relatively short, approximately 15 to 20 seconds (s) based on an assumed boat speed of 4.5 knots. During firing, a brief (approximately 0.1 s) pulse sound is emitted; the airguns will be silent during the intervening periods. The dominant frequency components range from two to 188 Hertz (Hz).

The tow depth of the airgun array will be 9 m (29.5 ft) during the surveys. Because the actual source is a distributed sound source (18 airguns) rather than a single point source, the highest sound measurable at any location in the water will be less than the nominal source level. In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal omni-directional source level applicable to downward propagation because of the directional nature of the sound from the airgun array (i.e., sound is directed downward). Figure 3 of the IHA application shows one linear airgun array or ''string'' with ten airguns. Figure 4 of the IHA application diagrams the airgun array and streamer deployment from the *Langseth.*

Hydrophone Streamer

Acoustic signals will be recorded using a system array of four hydrophone streamers, which would be towed behind the *Langseth.* Each streamer would consist of Sentry Solid Streamer Sercel cable approximately 6 km (3.2 nmi) long. The streamers are attached by floats to a diverter cable, which keeps the streamer spacing at approximately 100 to 150 m (328 to 492 ft) apart.

Seven hydrophones will be present along each streamer for acoustic measurement. The hydrophones will consist of a mixture of Sonardyne Transceivers. Each streamer will contain three groups of paired hydrophones, with each group approximately 2,375 m (7,800 ft) apart. The hydrophones within each group will be approximately 300 m (984 ft) apart. One additional hydrophone will be located on the tail buoy attached to the end of the streamer cable. In addition, one Sonardyne Transducer will be attached to the airgun array. Compass birds will be used to keep the streamer cables and hydrophones at a depth of approximately 10 m (32.8 ft). One compass bird will be placed at the front end of each streamer as well as periodically along the streamer. Figure 4 of the IHA application depicts the configuration of both the streamer and airgun array used by the *Langseth.* Details regarding the hydrophone streamer and acoustic recording equipment specifications are included in Table 1 of the IHA application.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun arrays used by L–DEO and PG&E on the *Langseth* are 236 to 265 dB re 1 μPa (p-p) and the rms value for a given airgun pulse is typically 16 dB re 1 μPa lower than the peak-to-peak value (Greene, 1997; McCauley *et al.,* 1998, 2000a). The specific source output for the 18 airgun array is 252 dB (peak) and 259 dB (p-p). However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, L–DEO and PG&E have predicted the received sound levels in relation to distance and direction from the 18 airgun array and the single Bolt

1900LL 40 in^3 airgun, which will be used during power-downs. A detailed description of L–DEO and PG&E's modeling for this survey's marine seismic source arrays for protected species mitigation is provided in Appendix A of the IHA application and NSF's EA. Appendix A (GSI Technical Memorandum 470–3 and GSI Technical Memorandum 470–2RevB) of the IHA application and NSF's EA discusses the characteristics of the airgun pulses. NMFS refers the reviewers to the IHA application and EA documents for additional information.

Predicted Sound Levels for the Airguns

To determine exclusion zones for the airgun array to be used off the central coast of California, the noise modeling for the proposed 3D seismic survey is based on the results of mathematical modeling conducted by Greeneridge Sciences, Inc. (2011). The model results are based upon the airgun specifications provided for the *Langseth* and seafloor characteristics available for the project area. Specifically, L–DEO's predicted sound contours were used to estimate pulse sound level extrapolated to an effective distance of one meter, effectively reducing the multi-element array to a point source. Such a description is valid for descriptions of the far field sounds, i.e., at distances that are long compared to the dimensions of the array and the sound wavelength. Greeneridge Sciences, Inc. did not account for near-field effects. However, since the vast majority of acoustic energy radiated by an airgun array is below 500 Hz and the near field is small for the given airgun array at these frequencies (the radius of the near field around the array is 21 m [68.9 ft] or less for frequencies below 500 Hz), near-field effects are considered minimal.

The sound propagation from the airgun array was modeled in accordance with physical description of sound propagation and depends on waveguide characteristics, including water depth, water column sound velocity profile, and geoacoustic parameters of the ocean bottom. For the sound propagation model, Greeneridge Sciences, Inc. relied on variants of the U.S. Navy's range-dependent Acoustic Model. Greeneridge Sciences, Inc. modeled three 2D (range versus depth) propagation paths, each with range-dependent (i.e., range-varying) bathymetry and range-independent geoacoustic profiles. The resulting received sound levels at a receiver depth of 6 m (19.7 ft) and across range were then ''smoothed'' via least-squares regression. The monotonically-decreasing regression equations yielded the estimated safety radii.

The accuracy of the sound field predicted by the acoustic propagation model is limited by the quality and resolution of the available environmental data. Greeneridge Sciences, Inc. used environmental information provided by the client for the proposed survey area, specifically, bathymetry data, a series of measured water column sound speed profiles, and descriptive sediment and basement properties. Greeneridge Sciences, Inc. used two geoacoustic profiles for its three propagation paths: One for the upslope propagation path (sand overlaying sandstone) and one for the downslope and alongshore propagation paths (silt overlaying sandstone)

L–DEO and PG&E have used these calculated values to determine exclusion zones for the 18 airgun array and previously modeled measurements by L–DEO for the single airgun, to designate exclusion zones for purposes of mitigation, and to estimate take for marine mammals off the central coast of California. A detailed description of the modeling effort is provided in Appendix A of NSF's EA.

Using the model (airgun array and single airgun), Table 1 (below) shows the distances at which three rms sound levels are expected to be received from the 18 airgun array and a single airgun. To avoid the potential for injury or permanent physiological damage (Level A harassment), NMFS (1995, 2000) has concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa and 190 dB re: 1 μPa, respectively. L–DEO and PG&E used these levels to establish the exclusion zones. If marine mammals are detected within or about to enter the appropriate exclusion zone, the airguns will be powered-down (or shut-down, if necessary) immediately. NMFS also assumes that marine mammals exposed to levels exceeding 160 dB re: 1 μPa may experience Level B harassment.

Table 1 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the 18 airgun array and a single airgun operating in upslope (inshore), downslope (offshore), and alongshore depths. For the proposed project, L–DEO and PG&E plan to use the upslope distance (inshore) for the 160 dB (6,210 m [20,374 ft]) and 180 dB (1,010 m [3,313.7 ft], and alongshore distance for the 190 dB (320 m [1,049.9 ft]), for the determination of the buffer and exclusion zones since this represents the largest and therefore most conservative distances determined by the Greeneridge Sciences, Inc. modeling.

Table 1. Modeled (array) or predicted (single airgun) distances to which sound levels ≥ 190, 180, and 160 dB re: 1 μPa (rms) could be received in upslope, downslope, and alongshore propagation paths during the proposed survey off the central coast of California, November to December, 2012.

Sound pressure level (SPL) (dB re 1 μPa)	Predicted RMS radii distances for 18 airgun array		
	Upslope distance (inshore)	Downslope distance (offshore)	Alongshore distance
190 dB	250 m (0.13 nmi)	280 m (0.15 nmi)	320 m (0.17 nmi)
180 dB	1,010 m (0.55 nmi)	700 m (0.38 nmi)	750 m (0.40 nmi)
160 dB	6,210 m (3.35 nmi)	4,450 m (2.40 nmi)	4,100 m (2.21 nmi)

Sound pressure level (SPL) (dB re 1 μPa)	Predicted RMS radii distances for single airgun		
	Shallow water (< 100 m)	Intermediate water (100 to 1,000 m)	Deep Water (> 1,000 m)
190 dB	150 m (0.08 nmi)	18 m (< 0.01 nmi)	12 m (< 0.01 nmi)
180 dB	296 m (0.16 nmi)	60 m (0.03 nmi)	40 m (0.02 nmi)
160 dB	1,050 m (0.57 nmi)	578 m (0.31 nmi)	385 m (0.21 nmi)

Along with the airgun operations, two additional acoustical data acquisition systems will be operated from the *Langseth* continuously during the survey. The ocean floor will be mapped with the Kongsberg EM 122 multibeam echosounder and a Knudsen 320B sub-bottom profiler. These sound sources will be operated continuously from the *Langseth* throughout the cruise.

Multibeam Echosounder

The *Langseth* will operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted multibeam echosounder emits brief pulses of sound (also called a ping) (10.5 to 13, usually 12 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

Each ping consists of eight (in water greater than 1,000 m) or four (less than 1,000 m) successive, fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave pulses increase from 2 to 15 milliseconds (ms) long in water depths up to 2,600 m (8,350.2 ft), and frequency modulated (FM) chirp pulses up to 100 ms long are used in water greater than 2,600 m. The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between the pulses for successive sectors (see Table 2 of the IHA application).

Sub-Bottom Profiler

The *Langseth* will also operate a Knudsen Chirp 320B sub-bottom continuously throughout the cruise simultaneously with the multibeam echosounder to map and provide information about the sedimentary features and bottom topography. The beam is transmitted as a 27° cone, which is directed downward by a 3.5 kHz transducer in the hull of the *Langseth.* The maximum output is 1 kilowatt (kW), but in practice, the output varies with water depth. The pulse interval is one second, but a common mode of operation is to broadcast five pulses at one second intervals followed by a 5-second pause.

Both the multibeam echosounder and sub-bottom profiler are operated continuously during survey operations. Given the relatively shallow water depths of the survey area (20 to 300 m [66 to 984 ft]), the number of pings or transmissions would be reduced from 8 to 4, and the pulse durations would be reduced from 100 ms to 2 to 15 ms for the multibeam echosounder. Power levels of both instruments would be reduced from maximum levels to account for water depth. Actual operating parameters will be established at the time of the survey.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 18 airgun array has the potential to harass marine mammals. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (approximately 4.6 knots [kts]; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Gravimeter

The *Langseth* will employ a Bell Aerospace BGM–3 gravimeter system (see Figure 5 of the IHA application) to measure very tiny fractional changes within the Earth's gravity caused by nearby geologic structures, the shape of the Earth, and by temporal tidal variations. The gravimeter has been specifically designed to make precision measurements in a high motion environment. Precision gravity measurements are attained by the use of the highly accurate Bell Aerospace Model XI inertial grade accelerometer.

Magnetometer

The *Langseth* will employ a Bell Aerospace BGM–3 geometer, which contains a model G–882 cesium-vapor marine magnetometer (see Figure 6 of the IHA application). Magnetometers measure the strength and/or direction of a magnetic field, generally in units of nanotesla in order to detect and map geologic formations. These data would enhance earlier marine magnetic mapping conducted by the U.S. Geologic Survey (Sliter *et al.,* 2009).

The G–882 is designed for operation from small vessels for shallow water surveys as well as for the large survey vessels for deep tow applications. Power may be supplied from a 24 to 30 VDC battery power or a 110/220 VAC power supply. The standard G–882 tow cable includes a Vectran strength member and can be built to up to 700 m (2,297 ft) (no telemetry required). The shipboard end of the tow cable is attached to a junction box or onboard cable. Output data are recorded on a computer with an RS–232 serial port.

Both the gravimeter and magnetometers are ''passive'' instruments and do not emit sounds, impulses, or signals, and are not expected to affect marine mammals.

Nearshore and Onshore Survey Operations

To collect deep seismic data in water depths that are not accessible by the *Langseth* (less than 25 m [82 ft]), seafloor geophones and both offshore and onshore seismic sources will be used. The currently proposed locations for the seafloor geophone lines between Point Buchon and Point San Luis are shown in Figure 7 of the IHA application.

Twelve Fairfield Z700 marine nodes would be placed on the seafloor along two nearshore survey routes as a pilot test prior to the full deployment of 600 nodes scheduled for 2013. The northern route (Crowbar Beach) traverses the Point Buchon MPA north of Diablo Canyon Power Plant. The southern route (either Green Peak or Deer Canyon) is located south of the Diablo Canyon Power Plant. The approximate locations of the proposed nodal routes are depicted in Figure 7 of the IHA application. Six nodes would be placed at 500 m (1,640.4 ft) intervals along each route for a total length of 3 km (1.9 mi). Maximum water depth ranges from 70 m (229.7 ft) (Crowbar) to 30 m (98.4 ft) (Deer Canyon). Marine nodes would be deployed using a vessel and (in some locations) divers and will be equipped with ultra-short baseline acoustic tracking system to position and facilitate recovery of each node. The tracking equipment will be used to provide underwater positioning of a remotely operated vehicle during deployment and recovery of the nodes.

The seafloor equipment will be in place for the duration of the data collection for the offshore 3D high energy seismic surveys plus deployment and recovery time. Node deployment will be closely coordinated with both offshore and onshore survey operations to ensure survey activities are completed before the projected batter life of 45 days is exceeded. PG&E anticipates using a locally-available vessel to deploy and retrieve the geophones. The vessel would be a maximum of 50 m in length. The *Michael Uhl,* which is locally available, its sister vessel, or a vessel of similar size and engine specification, is proposed for this purpose.

Onshore, a linear array of ZL and nodals will be deployed along a single route on the Morro Strand to record onshore sound transmitted from the offshore airgun surveys. Route location is shown in Figure 9 of the IHA application. Ninety nodes would be placed at 100 m (328 ft) intervals along the strand for a total route length of approximately 9 km (5.6 mi). The

autonomous, nodal, cable-less recording devices (see Figure 9 of the IHA application) would be deployed by foot into the soil adjacent to existing roads, trails, and beaches. The nodal systems are carried in backpacks and pressed into the ground at each receiver point. Each nodal would be removed following completion of the data collection. PG&E estimates that the onshore receiver activities would be conducted over a 2 to 3 day period, concurrent with the offshore surveys. The onshore receivers would record the offshore sound sources during the seismic operations. Figure 10 of the IHA application depicts the area where the onshore receivers are proposed to be placed along the Morro Strand. PG&E and NMFS have determined that onshore activities are unlikely to impact marine mammals, including pinnipeds at haul-outs and rookeries, in the proposed action area.

More information on the vessels, equipment, and personnel requirements proposed for use in the offshore survey can be found in sections 1.4 and 1.5 of the IHA application.

Dates, Duration, and Specified Geographic Region

The proposed project located offshore of central California would have a total duration of approximately 49.25 operational days occurring during the November through December, 2012 timeframe, which will include approximately 24 days of active seismic airgun operations. Mobilization will initiate on October 15, 2012, with active airgun surveys taking place from November 1 through December 31, 2012. Below is an estimated schedule for the proposed project based on the use of the *Langseth* as the primary survey vessel (the total number of days is based on adding the non-concurrent tasks):

- Mobilization to project site—6 days;
- Initial equipment deployment—3 days (includes offshore geophone deployment);
- Pre-activity marine mammal surveys—5 days (concurrent with offshore deployment activities);
- Onshore geophone deployment—2 to 3 days (concurrent with offshore deployment activities);
- Equipment calibration and sound check (i.e., sound source verification)—5 days;
- Seismic survey—23.25 days (Survey Box 4 will be surveyed first followed by Survey Box 2, 24/7 operations in all areas);
- Survey Box 4 (survey area within Estero Bay)—9.25 days;
- Survey Box 2 (survey area from Estero Bay to offshore to the mouth of the Santa Maria River)—14 days;
- Streamer and airgun preventative maintenance—2 days;
- Additional shut-downs (marine mammal presence, crew changes, and unanticipated weather delays)—4 days;
- Demobilization—6 days.

Placement of the onshore receiver lines would be completed prior to the start of offshore survey activities and would remain in place until the offshore survey can be completed. Some minor deviation from this schedule is possible, depending on logistics and weather (i.e., the cruise may depart earlier or be extended due to poor weather; there could be additional days of seismic operations if collected data are deemed to be of substandard quality).

The latitude and longitude for the bounds of the two survey boxes are:

Survey Box 4:

35° 25′ 21.7128″ North, 120° 57′ 44.7001″ West
35° 20′ 16.0648″ North, 121° 9′ 24.1914″ West
35° 18′ 38.3096″ North, 120° 53′ 29.9525″ West
35° 14′ 42.003″ North, 121° 3′ 36.9513″ West

Survey Box 2:

34° 57′ 43.3388″ North, 120° 45′ 12.8318″ West
34° 55′ 40.383″ North, 120° 48′ 59.3101″ West
35° 25′ 40.62″ North, 121° 00′ 27.12″ West
35° 23′ 57.26″ North, 121° 04′ 37.28″ West

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Thirty-six marine mammal species (29 cetaceans [whales, dolphins, and porpoises], 6 pinnipeds [seals and sea lions], and 1 fissiped) are known to or could occur off the central coast of California study area. Several of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the North Pacific right (*Eubalaena japonica*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales. The Guadalupe fur seal (*Arctocephalus townsendi*) and Eastern stock of Steller sea lion (*Eumetopias jubatus*), and southern sea otter (*Enhydra lutris nereis*) are listed as threatened under the ESA. The southern sea otter is the one marine mammal species mentioned in this document that is managed by the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis; all others are managed by NMFS. While in their range, North Pacific right, sei, and sperm whale sightings are uncommon in the proposed project area, and have a low likelihood of occurrence during the proposed seismic survey. Similarly, the proposed project area is generally north of the range of the Guadalupe fur seal. Table 2 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the proposed study area during November to December, 2012.

Table 2. The habitat, regional abundance, and conservation status of marine mammals that may occur in or near the proposed seismic survey area off the central coast of California. (See text and Table 4 in L–DEO and PG&E's application for further details.)

Species	Habitat	Population estimate [3] (minimum)	ESA [1]	MMPA [2]	Population trend [3]
Mysticetes:					
North Pacific right whale (*Eubalaena japonica*).	Pelagic and coastal	NA (18 to 21)—Eastern North Pacific stock.	EN	D	No information available
Gray whale (*Eschrichtius robustus*).	Coastal, shallow shelf	19,126 (18,017)—Eastern North Pacific stock.	DL—Eastern North Pacific stock EN—Western North Pacific stock.	NC—Eastern North Pacific stock D—Western North Pacific stock.	Increasing over past several decades
Humpback whale (*Megaptera novaeangliae*).	Mainly nearshore, banks.	2,043 (1,878)—California/Oregon/Washington stock.	EN	D	Increasing
Minke whale (*Balaenoptera acutorostrata*).	Pelagic and coastal	478 (202)—California/Oregon/Washington stock.	NL	NC	No information available

Species	Habitat	Population estimate [3] (minimum)	ESA [1]	MMPA [2]	Population trend [3]
Sei whale (*Balaenoptera borealis*).	Primarily offshore, pelagic.	126 (83)—Eastern North Pacific stock.	EN	D	No information available
Fin whale (*Balaenoptera physalus*).	Continental slope, pelagic.	3,044 (2,624)—California/Oregon/Washington stock.	EN	D	Unable to determine
Blue whale (*Balaenoptera musculus*).	Pelagic, shelf, coastal	2,497 (2,046)—Eastern North Pacific stock.	EN	D	Unable to determine
Odontocetes:					
Sperm whale (*Physeter macrocephalus*).	Pelagic, deep sea	971 (751)—California/Oregon/Washington stock.	EN	D	Variable
Pygmy sperm whale (*Kogia breviceps*).	Deep waters off the shelf.	579 (271)—California/Oregon/Washington stock.	NL	NC	No information available
Dwarf sperm whale (*Kogia sima*).	Deep waters off the shelf.	NA—California/Oregon/Washington stock.	NL	NC	No information available
Cuvier's beaked whale (*Ziphius cavirostris*).	Pelagic	2,143 (1,298)—California/Oregon/Washington stock.	NL	NC	No information available
Baird's beaked whale (*Berardius bairdii*).	Pelagic	907 (615)—California/Oregon/Washington stock.	NL	NC	No information available
Mesoplodon beaked whale (includes Blainville's beaked whale [*M. densirostris*], Perrin's beaked whale [*M. perrini*], Lesser beaked whale [*M. peruvianis*], Stejneger's beaked whale [*M. stejnegeri*], Gingko-toothed beaked whale [*M. gingkodens*], Hubbs' beaked whale [*M. carlhubbsi*]).	Pelagic	1,204 (576)—California/Oregon/Washington stock.	NL	NC	No information available
Bottlenose dolphin (*Tursiops truncatus*).	Coastal, oceanic, shelf break.	1,006 (684)—California/Oregon/Washington stock 323 (290)—California Coastal stock.	NL	NC D—Western North Atlantic coastal.	No information available Stable
Striped dolphin (*Stenella coeruleoalba*).	Off continental shelf	10,908 (8,231)—California/Oregon/Washington stock.	NL	NC	Unable to determine
Short-beaked common dolphin (*Delphinus delphis*).	Shelf, pelagic, seamounts.	411,211 (343,990)—California/Oregon/Washington stock.	NL	NC	Variable with oceanographic conditions
Long-beaked common dolphin (*Delphinus capensis*).	Coastal, on continental shelf.	27,046 (17,127)—California stock.	NL	NC	No information available, variable with oceanographic conditions
Pacific white-sided dolphin (*Lagenorhynchus obliquidens*).	Offshore, slope	26,930 (21,406)—California/Oregon/Washington stock.	NL	NC	No information available
Northern right whale dolphin (*Lissodelphis borealis*).	Slope, offshore waters	8,334 (6,019)—California/Oregon/Washington stock.	NL	NC	Unable to determine
Risso's dolphin (*Grampus griseus*).	Deep water, seamounts	6,272 (4,913)—California/Oregon/Washington stock.	NL	NC	Unable to determine
Killer whale (*Orcinus orca*)	Pelagic, shelf, coastal	240 (162)—Eastern North Pacific Offshore stock 346 (346)—Eastern North Pacific Transient stock 354 (354)—West Coast Transient stock.	NL EN—Southern resident.	NC D—Southern resident, AT1 transient.	No information available, No information available, Declining, Increased and slowing
Short-finned pilot whale (*Globicephala macrorhynchus*).	Pelagic, shelf coastal	760 (465)—California/Oregon/Washington stock.	NL	NC	Unable to determine
Harbor porpoise (*Phocoena phocoena*).	Coastal and inland waters.	2,044 (1,478)—Morro Bay stock.	NL	NC	Increasing
Dall's porpoise (*Phocoenoides dalli*).	Shelf, slope, offshore	42,000 (32,106)—California/Oregon/Washington stock.	NL	NC	No information available
Pinnipeds:					
California sea lion (*Zalophus californianus*).	Coastal, shelf	296,750 (153,337)—U.S. stock.	NL	NC	Increasing
Steller sea lion (*Eumetopias jubatus*).	Coastal, shelf	49,685 (42,366)—Western stock 58,334 to 72,223 (52,847)—Eastern stock.	T	D	Decreasing in California

Species	Habitat	Population estimate [3] (minimum)	ESA [1]	MMPA [2]	Population trend [3]
Guadalupe fur seal (*Arctocephalus townsendi*).	Coastal, shelf	7,408 (3,028)—Mexico stock.	T	D	Increasing
Northern fur seal (*Callorhinus ursinus*).	Pelagic, offshore	9,968 (5,395)—San Miguel Island stock.	NL	D	Increasing
Northern elephant seal (*Mirounga angustirostris*).	Coastal, pelagic in migration.	124,000 (74,913)—California Breeding stock.	NL	NC	Increasing
Pacific harbor seal (*Phoca vitulina richardsi*).	Coastal	30,196 (26,667)—California stock.	NL	NC	Increasing
Fissipeds:					
Southern sea otter (*Enhydra lutris nereis*).	Coastal	2,711—California stock	T	D	Increasing

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] NMFS Stock Assessment Reports.

In the Pacific Ocean, harbor porpoises are found in coastal and inland waters from California to Alaska and across to Kamchatka and Japan (Gakin, 1984). Harbor porpoises appear to have more restricted movements along the western coast of the continental United States, than along the eastern coast, with some regional differences within California. Based on genetic differences that showed small-scale subdivision within the U.S. portion of its range, California coast stocks were re-evaluated and the stock boundaries were revised. The boundaries (i.e., range) for the Morro Bay stock of harbor porpoises are from Point Sur to Point Conception, California. The vast majority of harbor porpoise in California are within the 0 to 92 m (0 to 301.8 ft) depth, however, a smaller percentage can be found between the 100 to 200 m (328 to 656.2 ft) isobaths. A systematic ship survey of depth strata out to 90 m (295.3 ft) in northern California showed that harbor porpoise abundance declined significantly in waters deep than 60 m (196.9 ft) (Caretta *et al.*, 2001b). Additionally, individuals of the Morro Bay stock appear to be concentrated at significantly higher densities in one specific area of their overall range, which NMFS is referring to as their ''core range,'' and density is much lower to both the North and South of this area. This core range has the larger number of harbor porpoise sightings and the largest number of harbor porpoise individuals observed during line-transect surveys and is defined for the purposes of this analysis from 34.755° through 35.425° North latitude (see transects 3 to 6 in Table 1 of Appendix B of the IHA application). For the Morro Bay stock, the best estimate of abundance is 2,044 animals and the minimum population estimate is 1,478 animals. There has been an increasing trend in harbor porpoise abundance in Morro Bay since 1988. The observed increase in abundance estimates for this stock since 1988 implies an annual growth rate of approximately 13%. Appendix B of the IHA application includes more detailed information on the density figures and calculations for the Morro Bay stock of harbor porpoise. Figure 1 of Appendix B shows the fine-scale density (including core habitat of higher density) as well as the proposed tracklines of Survey Box 4 and Survey Box 2.

Refer to sections 3 and 4 of L–DEO and PG&E's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the proposed project area. The application also presents how L–DEO and PG&E calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.*, 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, especially for the Morro Bay harbor porpoise stock, which could potentially be displaced from their core habitat during all or part of the seismic survey or longer. A more comprehensive review of these issues can be found in the ''Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement prepared for Marine Seismic Research that is funded by the National Science Foundation and conducted by the U.S. Geological Survey'' (NSF/USGS, 2011).

Tolerance

Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions. The

relative responsiveness of baleen and toothed whales are quite variable.

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.*, 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.*, 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the North Atlantic Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; and Jochens *et al.*, 2008). Dilorio and Clark (2009) found evidence of increased calling by blue whales during operations by a lower-energy seismic source (i.e., sparker). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, b; and Potter *et al.*, 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

Pinnipeds have the most sensitive hearing and/or produce most of their sounds at frequencies higher than the dominant components of airgun sound, but there is some overlap in the frequencies of the airgun pulses and the calls. However, the intermittent nature of airgun pulses presumably reduces the potential for masking

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example, blue whales are found to increase call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Dilorio and Clark, 2009). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increased call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.,* 2000). In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into the water from haul-outs or rookeries). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

- Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.,* 1995; Southall *et al.,* 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995; Gordon *et al.,* 2004). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a

substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km (2.2 to 8.1 nmi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies have shown that some species of baleen whales, notably bowhead, gray, and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in^3) and to a single airgun (20 in^3) with source level of 227 dB re 1 μPa (p-p). In the 1998 study, they documented that avoidance reactions began at 5 to 8 km (2.7 to 4.3 nmi) from the array, and that those reactions kept most pods approximately 3 to 4 km (1.6 to 2.2 nmi) from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of 4 to 5 km (2.2 to 2.7 nmi) by traveling pods and 7 to 12 km (3.8 to 6.5 nmi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa (rms) for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 μPa (rms). The initial avoidance response generally occurred at distances of 5 to 8 km (2.7 to 4.3 nmi) from the airgun array and 2 km (1.1 nmi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Data collected by observers during several seismic surveys in the Northwest Atlantic showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic vs. non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa (rms). However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the Northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Studies have suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa (rms). Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) reported that singing fin whales in the Mediterranean moved away from an operating airgun array.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and humpback whales) in the Northwest Atlantic found that overall, this group had lower sighting rates during seismic vs. non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,*

1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2010). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and PSOs on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996 a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008; Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the ''Stranding and Mortality'' section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of some mysticetes. However, other data suggest that some odontocete species, including harbor porpoises, may be more responsive than might be expected given their poor low-frequency hearing. Reactions at longer distances may be particularly likely when sound propagation conditions are conducive to transmission of the higher frequency components of airgun sound to the animals' location (DeRuiter *et al.,* 2006; Goold and Coates, 2006; Tyack *et al.,* 2006; Potter *et al.,* 2007).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. In the Beaufort Sea, some ringed seals avoided an area of 100 m to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 656 ft) of the trackline as the operating airgun array passed by (e.g., Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns

were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals and California sea lions tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

During seismic exploration off Nova Scotia, gray seals (*Halichoerus grypus*) exposed to noise from airguns and linear explosive charges did not react strongly (J. Parsons in Greene *et al.,* 1985). Pinnipeds, in both water and air, sometimes tolerate strong noise pulses from non-explosive and explosive scaring devices, especially if attracted to the area for feeding and reproduction (Mate and Harvey, 1987; Reeves *et al.,* 1996). Thus, pinnipeds are expected to be rather tolerant of, or habituate to, repeated underwater sounds from distant seismic sources, at least when the animals are strongly attracted to the area.

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 (above) presents the estimated distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 or 190 dB re 1 μPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa (rms), respectively. NMFS believes that to avoid the potential for Level A harassment, cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa (rms), respectively. The established 180 and 190 dB (rms) criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. NMFS also assumes that cetaceans and pinnipeds exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment.

For toothed whales, researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. The experiments show that exposure to a single impulse at a received level of 207 kPa (or 30 psi, p-p), which is equivalent to 228 dB re 1 Pa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.,* 2002). For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales than those of odontocetes (Southall *et al.,* 2007).

In pinnipeds, researchers have not measured TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.,* 2007) which would be equivalent to a single pulse with a received level of approximately 181 to 186 dB re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory

damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals (Southall *et al.,* 2007). PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise times. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than 6 dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans, and occasionally they seem to be attracted to operating seismic vessels (NMFS, 2010).

Stranding and Mortality—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.''

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a, 2005b; Romero, 2004; Sih *et al.,* 2004).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor et al., 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of mid-frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeir (2000); Canary Islands (2002); and Spain (2006). Refer to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez et al., (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used in marine waters for commercial seismic surveys or (with rare exceptions) for seismic research. These methods have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar (non-pulse sound) and, in one case, the co-occurrence of an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds could also be susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.,* 2007).

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues.

Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to ''the bends''), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to expect that the same to marine mammals will result from military sonar

and seismic surveys. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September, 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

Multibeam Echosounder

L–DEO and PG&E will operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned study. Sounds from the multibeam echosounder are very short pulses, occurring for 2 to 15 ms once every 5 to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this multibeam echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (in water less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore–aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2 to 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a multibeam echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the multibeam echosounder. The area of possible influence of the multibeam echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During L–DEO and PG&E's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of a multibeam echosounder on marine mammals are described below.

Masking—Marine mammal communications will not be masked appreciably by the multibeam echosounder signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the multibeam echosounder signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656.2 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in

behavior when exposed to 1 s tonal signals at frequencies similar to those that will be emitted by the multibeam echosounder used by L–DEO and PG&E, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from a multibeam echosounder.

Very few data are available on the reactions of pinnipeds to echosounder sounds at frequencies similar to those used during seismic operations. Hastie and Janik (2007) conducted a series of behavioral response tests on two captive gray seals to determine their reactions to underwater operation of a 375 kHz multibeam imaging echosounder that included significant signal components down to 6 kHz. Results indicated that the two seals reacted to the signal by significantly increasing their dive durations. Because of the likely brevity of exposure to the multibeam echosounder sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the animals.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the multibeam echosounder proposed for use by L–DEO and PG&E is quite different than sonar used for Navy operations. Pulse duration of the multibeam echosounder is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the multibeam echosounder for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the multibeam echosounder rather drastically relative to that from naval sonar.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the multibeam echosounder is not likely to result in the harassment of marine mammals.

Sub-Bottom Profiler

L–DEO and PG&E will also operate a sub-bottom profiler from the source vessel during the proposed survey. Sounds from the sub-bottom profiler are very short pulses, occurring for 1 to 4 ms once every second. Most of the energy in the sound pulses emitted by the sub-bottom profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 204 dB re 1 μPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a sub-bottom profiler more powerful than that on the *Langseth.* If the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the sub-bottom profiler signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the sub-bottom profiler signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the sub-bottom profiler are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the sub-bottom profiler are considerably weaker than those from the multibeam echosounder. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources, including airguns. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler.

Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below in this section.

Behavioral Responses to Vessel Movement—There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals (especially low frequency specialists) may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003, 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003, 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.,* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.,* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales—''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales—''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as

species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reaction varied when exposed to vessel noise and traffic. In some cases, beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (43.2 nmi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the *Langseth* and support vessels will be audible to marine mammals over a large distance, it is unlikely that marine mammals will respond behaviorally (in a manner that NMFS would consider harassment under the MMPA) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the *Langseth's* movements to result in Level B harassment.

Vessel Strike—Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 kts (24.1 km/hr, 14.9 mph).

L–DEO and PG&E's proposed operation of one source vessel and support vessels for the proposed survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during the proposed survey is unlikely due to the *Langseth's* and support vessels slow operational speed, which is typically 4.6 kts (8.5 km/hr, 5.3 mph). Outside of seismic operations, the *Langseth's* cruising speed would be approximately 10 kts (18.5 km/hr, 11.5 mph), which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the *Langseth* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: the *Langseth's* bridge offers good visibility to visually monitor for marine mammal presence; PSOs posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the PSOs receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately 6.4 km^2 (1.9 nmi^2) of equipment and cables. This large of an array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of becoming entangled due to slow speed of the survey vessel and onboard monitoring efforts. The NSF has no recorded cases of entanglement of marine mammals during any of their 160,934 km (86,897.4 nmi) of seismic surveys. In May, 2011, there was one recorded entanglement of an olive ridley sea turtle (*Lepidochelys olivacea*) in the *Langseth's* barovanes after the conclusion of a seismic survey off Costa Rica. There have cases of baleen whales, mostly gray whales (Heyning, 1990), becoming entangled in fishing lines. The probability for entanglement of marine mammals is considered not significant because of the vessel speed and the monitoring efforts onboard the survey vessel.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as

noted are designed to effect the least practicable impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e. fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals in any particular area of the approximately 740.5 km^2 proposed project area, previously discussed in this notice. The next section discusses the potential impacts of anthropogenic sound sources on common marine mammal prey in the proposed survey area (i.e., fish and invertebrates).

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish and invertebrate populations is limited. There are three types of potential effects of exposure to seismic surveys: (1) pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because, ultimately, the most important issues concern effects on marine fish populations, their viability, and their availability to fisheries.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as L–DEO, PG&E, and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* [2003] and less than approximately 200 Hz in Popper *et al.* [2005]) likely did not propagate to the fish because the water in the study areas was very shallow (approximately nine m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

An experiment of the effects of a single 700 in^3 airgun was conducted in Lake Meade, Nevada (USGS, 1999). The data were used in an Environmental Assessment of the effects of a marine reflection survey of the Lake Meade

fault system by the National Park Service (Paulson *et al.,* 1993, in USGS, 1999). The airgun was suspended 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and was fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates were hired by USGS to monitor the effects of the surveys, and concluded that airgun operations were not responsible for the death of any of the fish carcasses observed, and the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. MMS noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary. MMS also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix F of NSF's EA.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) the received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the

animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim. Tenera Environmental (2011b) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.,* 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes.

Andre *et al.* (2011) exposed four species of cephalopods (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*), primarily cuttlefish, to two hours of continuous 50 to 400 Hz sinusoidal wave sweeps at 157+/−5 dB re 1 μPa while captive in relatively small tanks. They reported morphological and ultrastructural evidence of massive acoustic trauma (i.e., permanent and substantial alterations [lesions] of statocyst sensory hair cells) to the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low frequency sound. The received SPL was reported as 157+/−5 dB re 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). It was noted however, that no behavioral impacts were exhibited by crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO and PG&E have reviewed the following source documents and have incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the recently completed Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO, PG&E and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based Marine Wildlife Contingency Plan;

(2) Scheduling to avoid areas of high marine mammal activity;

(3) Speed and course alterations;

(4) Proposed exclusion zones around the sound source;

(5) Power-down procedures;

(6) Shut-down procedures;

(7) Ramp-up procedures; and

(8) Morro Bay stock harbor porpoise mitigation, monitoring, and adaptive management that will detect significant impacts to harbor porpoises in real time in order to trigger appropriate mitigation measures (e.g., suspension of seismic operations).

Vessel-based Marine Wildlife Contingency Plan—The vessel-based seismic operations of the PG&E's Marine Wildlife Contingency Plan are designed to meet the anticipated Federal and State regulatory requirements. The objectives of the program will be:

- To minimize any potential disturbance to marine mammals and ensure all regulatory requirements are followed;
- To document observations of the proposed seismic survey on marine mammals; and
- To collect baseline data on the occurrence and distribution of marine mammals in the proposed study area.

Proposed survey design features include:

- Timing and locating seismic operations to avoid potential interference with the annual peak of the gray whale migration period;
- Limiting the size of the seismic sound source to minimize energy introduced into the marine environment; and
- Establishing buffer and exclusion zones radii based on modeling results of the proposed sound sources.

The Marine Wildlife Contingency Plan will be implemented by a team of NMFS-qualified PSOs. PSOs will be stationed aboard the source and support vessels through the duration of the proposed project. Reporting of the results of the vessel-based mitigation and monitoring program will include the estimation of the number of takes.

The vessel-based work will provide:

- Information needed to estimate the number of potential takes of marine mammals by harassment, which must be reported to NMFS and USFWS;
- Data on the occurrence, distribution, and activities of marine mammals in the areas where the proposed seismic operations are conducted; and
- Information to compare the distances, distributions, behavior, and movements of marine mammals relative

to the source vessel at times with and without airgun activity.

Scheduling to Avoid Areas of High Marine Mammal Activity—PG&E proposes to conduct offshore seismic surveys from October 15 through December 31, 2012, with airgun operations taking place from November 1 through December 31, 2012, to coincide with the reduced number of cetaceans in the area, and outside the peak gray whale annual migration period. This timeframe also is outside the breeding and pupping periods for the Pacific harbor seal (March to June) and California sea lion (May to late July), both of which have rookeries inshore, but adjacent to the proposed project area. No other pinnipeds breed in the project area. The 2012 survey timing has also been refined to address the breeding activity of the resident Morro Bay stock of harbor porpoises. As such, active use of airguns will not be started until November 1, 2012, which will minimize exposure of nursing harbor porpoise to seismic operations.

Speed and Course Alterations—If a marine mammal is detected outside the exclusion zone and, based on its position and direction of travel, is likely to enter the exclusion zone, changes of the vessel's speed and course will be considered if this does not compromise operational safety. For marine seismic surveys towing large streamer arrays, however, course alterations are not typically implemented due to the vessel's limited maneuverability. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the exclusion zone. If the marine mammal appears likely to enter the exclusion zone, further mitigation actions will be taken, including a power-down and/or shut-down of the airgun(s).

Proposed Exclusion Zones—L–DEO and PG&E use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 1 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160, 180, and 190 dB) from the 18 airgun array and a single airgun. The 180 dB and 190 dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000). L–DEO and PG&E used these levels to establish the exclusion and buffer zones.

If the PSVO detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew will immediately power-down the airgun array, or perform a shut-down if necessary (see ''Shut-down Procedures''). Table 1 summarizes the calculated distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the 18 airgun array operating in upslope, downslope, and alongshore depths (although only the upslope radii will be used for the 160 and 180 dB isopleths and the alongshore radii will be used for the 190 dB isopleth, as these are considered the most conservative) and the single airgun operating in shallow, intermediate, and deep water depths (all survey boxes are within water depths of 400 m or less). Received sound levels have been calculated by L–DEO, in relation to distance and direction from the airguns, for the 18 airgun array and for the single 1900LL 40 in^3 airgun, which will be used during power-downs.

A detailed description of the modeling effort for the 18 airgun array by Greeneridge Sciences, Inc. is presented in Appendix A of the IHA application and NSF EA. Modeled received sound levels prepared by L–DEO will be used for the single airgun.

If the PSVO detects marine mammal(s) within or about to enter the appropriate exclusion zone, the airguns will be powered-down (or shut-down, if necessary) immediately.

At the initiation of the 3D seismic survey, direct measurements will be taken of the received levels of underwater sound versus distance and direction from the airgun source vessel using calibrated hydrophones (i.e., a sound source verification test). The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify and adjust the buffer and exclusion zone distances. The field report will be made available to NMFS and PSOs within 120 hours of completing the measurements.

To augment visual observations on the *Langseth,* two scout vessels with a minimum of three NMFS-qualified PSOs onboard each, shall be positioned adjacent to the *Langseth* to monitor the buffer and exclusion zones for mitigation-monitoring purposes. The PSOs onboard the scout vessels will report to the PSOs onboard the *Langseth* if any marine mammals are observed.

Power-down Procedures—A power-down involves decreasing the number of airguns in use to one airgun, such that the radius of the 180 dB (or 190 dB) zone is decreased to the extent that the observed marine mammal(s) are no longer in or about to enter the exclusion zone for the full airgun array. A power-down of the airgun array can also occur when the vessel is moving from the end of one seismic trackline to the start of the next trackline. During a power-down for mitigation, L–DEO and PG&E will operate one airgun. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the seismic vessel in the area; and, (b) retain the option of initiating a ramp-up to full operations under poor visibility conditions. In contrast, a shut-down occurs when all airgun activity is suspended.

If the PSVO detects a marine mammal outside the exclusion zone and is likely to enter the exclusion zone, L–DEO and PG&E will power-down the airguns to reduce the size of the 180 dB exclusion zone before the animal is within the exclusion zone. Likewise, if a mammal is already within the exclusion zone, when first detected L–DEO and PG&E will power-down the airguns immediately. During a power-down of the airgun array, L–DEO ad PG&E will operate the single 40 in^3 airgun, which has a smaller exclusion zone. If the PSVO detects a marine mammal within or near the smaller exclusion zone around that single airgun (see Table 1), L–DEO and PG&E will shut-down the airgun (see next section).

Following a power-down, the *Langseth* will not resume full airgun activity until the marine mammal has cleared the 180 or 190 dB exclusion zone (see Table 1). The PSO will consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone, or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or
- The vessel has transited outside the original 180 dB exclusion zone after an 8 minute period minute wait period.

The *Langseth* crew will resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew will resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

Because the vessel has transited away from the vicinity of the original sighting during the 8 minute period, implementing ramp-up procedures for the full array after an extended power-down (i.e., transiting for an additional

35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* PSOs are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, PSOs can observe to the horizon (10 km or 5.4 nmi) from the height of the *Langseth's* observation deck and should be able to state with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shut-down Procedures—L–DEO and PG&E will shut-down the operating airgun(s) if a marine mammal is seen within or approaching the exclusion zone for the single airgun. L–DEO will implement a shut-down:

(1) If an animal enters the exclusion zone of the single airgun after L–DEO has initiated a power-down; or

(2) If an animal is initially seen within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating (and it is not practical or adequate to reduce exposure to less than 180 dB [rms]).

Considering the conservation status for the North Pacific right whale, the airguns will be shut-down immediately in the unlikely event that this species is observed, regardless of the distance from the *Langseth*. Ramp-up will only begin if the North Pacific right whale has not been seen for 30 minutes.

Following a shut-down in excess of 8 minutes, the *Langseth* crew will initiate a ramp-up with the smallest airgun in the array (40 in^3). The crew will turn on additional airguns in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if he/she sights a marine mammal, the *Langseth* crew will implement a power-down or shut-down as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew will need to temporarily shut-down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew will follow ramp-up procedures for a shut-down described earlier and the PSOs will monitor the full exclusion zone and will implement a power-down or shut-down if necessary.

If the full exclusion zone is not visible to the PSO for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew will not commence ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew will not ramp-up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the zone for that array will not be visible during those conditions.

If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew will not initiate ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. L–DEO and PG&E will follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when a power-down shut down has exceeded that period. L–DEO and PG&E considered proposing that, for the present cruise, this period would be approximately two minutes. Since from a practical and operational standpoint this time period is considered too brief, L–DEO and PG&E propose to use 8 minutes, which is a time period used during previous 2D surveys. L–DEO has used similar periods (approximately 8 to 10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if marine mammals are sighted, L–DEO will implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO and PG&E will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones.

Use of a Small-Volume Airgun During Turns and Maintenance

Throughout the seismic survey, particularly during turning movements, and short-duration equipment maintenance activities, L–DEO and PG&E will employ the use of a small-volume airgun (i.e., mitigation airgun) to deter marine mammals from being within the immediate area of the seismic operations. The mitigation airgun would be operated at approximately one shot per minute and would not be operated for longer than three hours in duration (turns may last two to three hours for the proposed project).

During turns or brief transits (e.g., less than 2 hours) between seismic tracklines, one airgun will continue operating. The ramp-up procedure will still be followed when increasing the source levels from one airgun to the full airgun array. However, keeping one airgun firing will avoid the prohibition of a ''cold start'' during darkness or other periods of poor visibility. Through use of this approach, seismic operations may resume without the 30 minute observation period of the full exclusion zone required for a ''cold start,'' and without ramp-up if operating with the mitigation airgun for under 8 minutes, or with ramp-up if operating with the mitigation airgun over 8 minutes. PSOs will be on duty whenever the airguns are firing during daylight, and at night during the 30 minute periods prior to ramp-ups as well as during ramp-ups or when the Protected Species Acoustic Observer detects the presence of marine mammals within the exclusion zone.

Nighttime Survey Areas

Nighttime operations will be restricted to areas in which marine mammal abundance is low based on daytime observations (i.e., vessel and period aerial data) and historical distribution patterns. Data collection along inshore tracklines and near Church Rock (35° 20.675′ North, 120° 59.049′ West) will be done during daylight hours to the extent possible. If nighttime survey operations are located within the 40 m (131 ft) depth contour, PSOs will visually monitor the area forward of the vessel with the aid of binoculars, and the forward-looking infrared system available on the *Langseth.*

Harbor Porpoise Mitigation, Monitoring, and Adaptive Management Plan

Because of heightened concern over impacts from seismic operations to harbor porpoises from the proposed action, NMFS coordinated closely with PG&E to develop a comprehensive and precautionary monitoring, mitigation, and adaptive management framework. This plan, which PG&E has agreed to operationally and financially support, is designed to detect significant responses of harbor porpoises to the activity that can be used to trigger management actions in real-time and allow the activity to proceed in a cautious manner in light of some uncertainty regarding how this species will respond to the activity. Additional measures include:

- Implementation of an extended initial ramp-up (around the length of time it takes to run the first transect of the aerial survey) at the beginning of each of the two survey boxes.
- Ensuring that airgun operations for each survey box begin in the daylight.

Data collected during pre-activity survey operations and on-going operational monitoring activities will be used during the proposed seismic operations to adjust or redirect seismic operations should significant adverse impacts be observed to marine mammals in the proposed project area. The Adaptive Management Plan will be finalized in consultation with resource agencies involved in the permitting and monitoring activities associated with the proposed 2012 seismic operations. Information sources used as part of this plan will include, but not be limited to the following:

- Pre-activity and weekly aerial surveys (see Appendix G of the IHA application);
- Sound source verification study;
- Visual monitoring by PSOs onboard vessels;
- NMFS Morro Bay stock of Harbor Porpoise Monitoring Program (see Appendix D of the IHA application), which will use aerial surveys, C–PODS (passive acoustic devices tuned to detect high frequency harbor porpoise vocalizations), and moored hydrophones (tuned to identify received levels of seismic signals) to detect broader scale harbor porpoise responses to seismic surveys; and
- Marine Mammal Stranding Response Plan (see Appendix F of the IHA application), which will utilize response personnel and necessary equipment to monitor the action area for behaviors suggestive of stranding responses, and subsequently run appropriate tests if an event occurs.

Triggers for Adaptive Management—Below are the situations in which suspension of seismic airgun operations would be required. Following suspension of activities for any of the situations outlined below, NMFS and our stranding network partners will further evaluate available information, including new information collected while seismic operations are suspended, and NMFS will coordinate with PG&E and L–DEO to determine if and how seismic operations may continue. The triggers that have been identified are as follows:

- The seismic survey will be suspended if the aerial surveys or acoustic detections show that moderate to large numbers of the Morro Bay stock of harbor porpoises, have been pushed out of their primary (core) habitat and/or outside of their normal stock range. Numerical thresholds for this, including (a) decreased densities in core habitat and/or (b) increased densities in secondary habitat (or beyond, e.g., Point Conception) will have to be identified based in part on the fine-scale ''baseline'' surveys planned for October, before seismic operations start, and NMFS's knowledge about their core habitat from the coarser historical aerial survey data.
- The seismic survey will be suspended if unusual behavior for harbor porpoises is observed that would suggest there is severe disturbance or stress/injury. Details of this criterion are difficult to predict, but harbor porpoises usually occur in loosely aggregated groups of 1 to 5 individuals, with characteristic surfacing behaviors. So, for example, a large, tight group of 50 to 100 individuals rafting or bunched in an unusual area would be of concern.
- A mass stranding (i.e., 2 or more animals that simultaneously strand, other than cow-calf pairs) or unusual nearshore milling (''near mass stranding'') of any cetacean species. At a minimum, the shut-down of all seismic airgun operations would continue until the disposition of the animals was complete; this could involve herding offshore, refloating/transporting/herding, transport to rehabilitation, euthanasia, or any combination of the above. Shut-down procedures will remain in effect until NMFS determines that, and advises PG&E that, all live animals have left the geographic area (either of their volition or following herding).
- If 2 cetaceans within one day, 3 or more cetaceans within a week, or 5 or more pinniped within a week are newly detected stranded (sick, injured, in need of medical attention, or dead) on the beach or floating incapacitated or dead within the impact zone during the period of seismic operations, the following would occur:
  - For live stranded animals, the stranding team would attempt to capture the animals and perform a Phase 1 examination, including auditory evoked potential (AEP) testing of all odontocetes, and any clinical tests deemed necessary by the attending veterinarian. If the animal(s) are determined to be candidates for immediate release (either from the original stranding location or following transport to a new location), shut-down may be needed until the release is complete. If the animal is determined to be a candidate for rehabilitation and the initial examination is inconclusive regarding a reason for stranding, Phase 2 investigations will be conducted.
  - For all dead stranded animals, the stranding team would attempt to recover the carcass(es) and perform a detailed necropsy with diagnostic imaging scans to rule out obvious cause of death (e.g., a Phase 1 investigation), as appropriate given the decomposition rate of the animal and other logistical constraints (size, weight, location, etc.). Then, if Phase 1 tests are inconclusive and the animal(s) is (are) in good body condition, Phase 2 investigations will be conducted.
  - In either case, if Phase 2 investigations are warranted for enough animals to meet the initial numerical criteria, seismic operations will be suspended.
- Strandings of single marine mammals with signs of acoustic trauma or barotrauma without another etiology would require a suspension of seismic operations.
- A ship-strike of a marine mammal by any of the vessels involved in the seismic survey (including chase/support vessels) would result in a suspension of seismic operations.

Data from the proposed seismic operations 2012 may also be used to revise proposed survey operations

within Survey Box 1, or associated mitigation and monitoring, which have been proposed to be conducted in 2013 as a result of consultation under the MMPA with NMFS.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Proposed Monitoring

L–DEO and PG&E propose to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. L–DEO and PG&E's proposed ''Monitoring Plan'' is described below this section. L–DEO and PG&E understand that this monitoring plan will be subject to review by NMFS, and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. L–DEO and PG&E are prepared to discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Aerial Surveys

PG&E proposes to conduct aerial surveys for large cetaceans in conjunction with the proposed seismic survey operations and in accordance with the requirements established by the California State Lands Commission Environmental Impact Report mitigation measures. In addition to the PG&E aerial surveys focusing on large cetaceans (flying above 305 m [1,000 ft]), NMFS/USFWS will be conducting low level aerial surveys designed to monitor southern sea otter and the Morro Bay stock of harbor porpoise movements through a separate project funded by PG&E. These NMFS/USFWS aerial survey operations will be conducted in close coordination with the PG&E aerial surveys, but under existing permits. The information generated by these two aerial survey operations will be used to inform the proposed project's Adaptive Management Plan. Discussions between PG&E and NMFS/USFWS are currently ongoing regarding the coordination of the aerial surveys and the potential for NMFS/USFWS to undertake all aerial survey operations. More information regarding the NMFS/USFWS aerial survey operations are provided in Appendix D and E of the IHA application. Two PSO's will be used on all aerial surveys. Aerial survey data and observations noted by PSOs will be provided to the agencies for review and consideration of potential refinements to mitigation measures. The general purpose of these aerial survey efforts are to:

- Identify direction of travel and corridors utilized by marine mammals relative to the proposed survey area;
- Identify locations within the proposed survey area that support aggregations of marine mammals;
- Identify the relative abundance of marine mammals within the proposed survey area; and
- Document changes in the behavior and distribution of marine mammals in the area before, during and after the proposed seismic operations.

With the proposed timing of the seismic operations, aerial surveys will be conducted prior to the initiation of, during, and after the proposed project. The aerial surveys will pay particular attention will be directed to the identification of the presence of large cetaceans (i.e., blue, fin, and humpback whales) due to the likelihood that those species will be present in the project area. Aerial survey operations focused on large cetaceans will include the following components:

- Approximately 5 to 10 days prior to the start of seismic operations, an aerial survey will be flown to establish a baseline for numbers and distribution of marine mammals in the project area;
- Aerial surveys will be conducted weekly during the seismic operations to assist in the identification of marine mammals within the project buffer and exclusion zones. Aerial monitors will be in direct communications with ship-based monitors to assess the effectiveness of monitoring operations. Based on the results of these coordinated monitoring efforts, the need for additional aerial surveys will be evaluated; and
- Approximately 5 to 10 days following the completion of the offshore seismic operations, a final aerial survey will be conducted to document the number and distribution of marine mammals in the project area. These data will be used in comparison with original survey data completed prior to the seismic operations.

A copy of the draft Aerial Survey Plan, that focuses particular attention on the presence of large cetaceans, is provided in Appendix G of the IHA application.

Vessel-Based Visual Monitoring

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups of the airguns at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (i.e., greater than approximately 8 minutes for this proposed cruise). When feasible, PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered-down or shut-down when marine mammals are observed within or about to enter a designated exclusion zone. The exclusion zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations off the central coast of California, at least five PSOs (PSVO and/or Protected Species Acoustic Observer [PSAO]) will be based aboard the *Langseth*. In addition, three PSO's will be positioned on each of the survey/chase vessels (which at this time is anticipated to be two vessels). L–DEO will appoint the PSOs with NMFS's concurrence. Observations

will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two PSVOs will be on duty from the observation tower (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on duty. PSVO(s) will be on duty in shifts no longer than 4 hours in duration.

Two PSVOs will also be on visual watch during all daytime ramp-ups of the seismic airguns. A third PSAO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSAO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the PSVO will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When marine mammals are detected within or about to enter the designated exclusion zone, the airguns will immediately be powered-down or shut-down if necessary. The PSVO(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the exclusion zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Vessel-Based Passive Acoustic Monitoring

Vessel-based, towed PAM will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The passive acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the PSVOs can be advised when cetaceans are detected.

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer laboratory where the acoustic station, signal conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One PSAO, an expert bioacoustician in addition to the four PSVOs, with primary responsibility for PAM, will be onboard the *Langseth.* The towed hydrophones will ideally be monitored by the PSAO 24 hours per day while at the proposed seismic survey area during airgun operations, and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to the array or back-up systems during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. One PSAO will monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The PSAO monitoring the acoustical data will be on shift for one to six hours at a time. All PSOs are expected to rotate through the PAM position, although the expert PSAO will be on PAM duty more frequently.

When a vocalization is detected while visual observations (during daylight) are in progress, the PSAO will contact the PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be related to the PSVO(s) to help him/her sight the calling animal. During non-daylight hours, when a cetacean is detected by acoustic monitoring and may be close to the source vessel, the *Langseth* crew will be notified immediately so that the proper mitigation measure may be implemented.

The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during daytime periods when the *Langseth* is underway without seismic operations. There will also be opportunities to collect baseline

biological data during the transits to, from, and through the study area.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and ramp-ups, power-downs or shut-downs will be recorded in a standardized format. The PSOs will record this information onto datasheets. During periods between watches and periods when operations are suspended, those data will be entered into a laptop computer running a custom computer database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. Quality control of the data will be facilitated by (a) The start-of survey training session; (b) subsequent supervision by the onboard lead PSO; and (c) ongoing data checks during the seismic survey.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Throughout the seismic survey, PSOs will prepare a report each day or at such other intervals as required by NMFS, USFWS, the U.S. Army Corps of Engineers, California State Lands Commission, California Coastal Commission, or PG&E, summarizing the recent results of the monitoring program. The reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS as well as PG&E, L–DEO, and NSF.

In addition to the vessel-based monitoring, L–DEO and PG&E will submit reports outlining the monitoring results of the aerial survey for large cetaceans, the aerial survey for harbor porpoises and other small cetaceans, and any marine mammals stranding response activities.

L–DEO and PG&E will submit a comprehensive report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (i.e., dates, times, locations, activities, associated seismic survey activities, and associated PAM detections). The report will minimally include:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals sightings including date, water depth, numbers, age/size/gender, and group sizes; and analyses of the effects of seismic operations;
- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closes point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS and NSF Web sites at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha* and *http://www.nsf.gov/geo/oce/encomp/index.jsp.*

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Level B harassment is anticipated and proposed to be authorized as a result of the proposed marine seismic survey off the central coast of California. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array are expected to result in the behavioral disturbance of some marine mammals, and potentially the temporary displacement of some of the Morro Bay stock of harbor porpoises from their preferred, or core, habitat area. There is no evidence that the planned activities could result in injury, serious injury, or mortality for which L–DEO and PG&E seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe L–DEO and PG&E's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program along the central coast of California. The estimates are based on a consideration of the number of marine mammals that could be harassed by seismic operations with the 18 airgun array to be used. The size of the proposed 3D seismic survey area in 2012 is approximately 740.52 km^2 (285.9 nmi^2) and located adjacent to the coastline and extending from 11 to 21 km (5.9 to 11.3 nmi) offshore, as depicted in Figure 2 of the IHA application.

L–DEO and PG&E assume that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the multibeam echosounder and sub-

bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the multibeam echosounder and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, L–DEO and PG&E provide no additional allowance for animals that could be affected by sound sources other than airguns.

Density estimates are based on the best available peer-reviewed scientific data, specifically, the NMFS online marine mammal database (Barlow *et al.,* 2009). These data are supplemented with non-published survey data obtained from the proposed project area during an earlier low-energy 3D survey (Padre Associates, Inc., 2011b). The low-energy 3D seismic surveys were conducted on 76 days between October 24, 2010 and February 5, 2011. The principal source of density information is the Strategic Environmental Research and Development Program (SERDP)–SDSS Marine Animal Model Mapper on the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) Web site (Barlow *et al.,* 2009), which was recommended by NMFS staff at the Southwest Regional Office. A second density dataset was prepared by Padre Associates, Inc. (2011b) based on marine mammal sightings recorded during a seismic survey conducted between October, 2010 and February, 2011. The Padre Associates, Inc. dataset is from the southern portion of the proposed survey area, and contained densities for marine mammal species for which data were sparse or absent from the NOAA database.

The Padre Associates, Inc. dataset was compiled from a series of daily marine mammal monitoring reports, and the data were not originally collected for the purposes of developing density estimates. Further, all survey data are subject to detectability and availability biases. Detectability bias is associated with diminishing sightability of marine mammals with increasing lateral distances from the survey trackline ($f[0]$). Availability bias is due to the fact that not all marine mammals are at the surface at all times, and, as such, there is less than 100 percent probability of detecting animals along the survey trackline $f(0)$, and it is measured by $g(0)$.

Within Table 3 (Tables 7 and 8 of the IHA application), marine mammal densities were calculated based on available density or survey data. PG&E and the NMFS Office of Protected Resources worked with the NMFS Southwest Fisheries Science Center (SWFSC) and Southwest Regional Office to identify the preferred method of acquiring density data was the SERDP sponsored by the Department of Defense (DOD) with mapping provided by OBIS–SEAMAP. Within the mapping program density data are available by strata or density models (indicated with a superscripted lower case ''a'' ([a]).

For density models, the Geographic Information Systems (GIS) shapefile of the proposed project area (tracklines [referred to as ''race track'' in the IHA application] with the 160 dB buffer zone) was uploaded into the program and densities for the ensonified area were calculated using available NMFS data within the uploaded project area. Density data calculated using this method was indicated with a superscript ''1'' ([1]). All densities calculated using this model were from summer data (defined as July to December). For density data indicated with a superscript ''2'' ([2]), stratum density data was used within the same SERDP marine mammal mapper; however, a different layer of the mapping program were utilized. The stratum layer provides limited density data for the region the species occurs within. This density number within the stratum layer is static for the region.

For Padre Associates, Inc. densities indicated with an uppercase superscript ''B'' ([B]), data were acquired between October, 2010 and February, 2011 during seismic surveys. The data used to acquire the densities were collected from daily monitoring logs where species were observed and recorded when navigating survey tracklines and transiting to and from the survey area. The density was calculated based on a 305 m (1,000 ft) visibility in each direction of the observer/vessel by the distance of tracklines or transits conducted during the survey period. These density data were used as supplemental information based on the lack of density models of species within the SERDP.

For harbor porpoise density data indicated with superscripted ''c'' ([c]), NMFS SWFSC staff worked with NMFS Office of Protected Resources to construct fine-scale density estimates based on aerial surveys of the central coast conducted between 2002 and 2011. NMFS SWFSC provided latitude coordinates of density changes for the harbor porpoise were inserted into GIS to delineate the associated polygon within the project survey boxes. The corrected density data were extracted for the project site within the 160 dB ensonified areas of Survey Boxes 2 and 4. The density data are variable based on the location within the project site, with the San Luis Bay having the highest density. Because of the variable densities used to extract the estimated number of individuals within the project site, the densities within Tables 7 and 8 of the IHA application are broad categorical densities for their corresponding survey box. Additionally, the offshore portion (greater than 92 m [301.8 ft]) of the harbor porpoise density is a stock-wide density used in Caretta *et al.* (2009) and also within the data provided by the NMFS SWFSC. An additional figure illustrating the fine scale densities used to calculate the take numbers is available in Appendix B of the IHA application.

TABLE 3—ESTIMATED DENSITIES OF MARINE MAMMAL SPECIES IN THE PROPOSED SURVEY OFF THE CENTRAL COAST OF CALIFORNIA, NOVEMBER TO DECEMBER, 2012

Species	NOAA density [a] (#/km²)		Padre Associates, Inc. density [b] (#/km²)	
	Box 2 minimum maximum mean	Box 4 minimum maximum mean	Transit	Transect
Mysticetes:				
North Pacific right whale [2]	0.000061 0.000061 0.000061	0.000061 0.000061 0.000061	NA	NA.

TABLE 3—ESTIMATED DENSITIES OF MARINE MAMMAL SPECIES IN THE PROPOSED SURVEY OFF THE CENTRAL COAST OF CALIFORNIA, NOVEMBER TO DECEMBER, 2012—Continued

Species	NOAA density [a] (#/km²)		Padre Associates, Inc. density [b] (#/km²)	
	Box 2 minimum maximum mean	Box 4 minimum maximum mean	Transit	Transect
Gray whale	NA	NA	0.0154	0.0211.
	NA	NA		
	NA	NA		
Humpback whale [1]	0.000088	0.00117	0.0028	0.0065.
	0.005781	0.00635		
	0.002349	0.003243		
Minke whale [2]	0.000276	0.000276	0.0007	0.0008.
	0.000276	0.000276		
	0.000276	0.000276		
Sei whale [2]	0.000086	0.000086	NA	NA.
	0.000086	0.000086		
	0.000086	0.000086		
Fin whale [1]	0.000142	0.00239	NA	NA.
	0.01083	0.0113		
	0.004385	0.006177		
Blue whale [1]	0.0001	0.001254	NA	NA.
	0.006603	0.006777		
	0.002652	0.003579		
Odontocetes:				
Sperm whale [1]	0.000009	0.000187	NA	NA.
	0.000723	0.000768		
	0.000297	0.000436		
Kogia spp. (Pygmy and dwarf sperm whale) [2].	0.001083	0.001083	NA	NA.
	0.001083	0.001083		
	0.001083	0.001083		
Baird's beaked whale [1]	0.000016	0.000244	NA	NA.
	0.001148	0.001148		
	0.000467	0.000638		
Small (*Mesoplodon* and Cuvier's) beaked whale [1c].	0.000042	0.000813	NA	NA.
	0.003347	0.003422		
	0.001363	0.001952		
Bottlenose dolphin [2]	Coastal [4]	Coastal [4]	NA	NA.
	0.361173	0.361173		
	0.361173	0.361173		
	0.361173	0.361173		
	Offshore—Winter	Offshore—Winter		
	0.000616	0.000616		
	0.000616	0.000616		
	0.000616	0.000616		
Striped dolphin [1]	0.000039	0.000943	NA	0.0081.
	0.0033	0.003448		
	0.001379	0.002075		
Short-beaked common dolphin [1]	0.01203	0.1612	0.0252	0.0836.
	0.8019	0.8285		
	0.3252	0.4443		
Long-beaked common dolphin [2]	0.018004	0.018004	NA	NA.
	0.018004	0.018004		
	0.018004	0.018004		
Pacific white-sided dolphin [1]	0.001027	0.01856	NA	NA.
	0.08342	0.0896		
	0.03364	0.04786		
Northern right whale dolphin [1]	0.00066	0.0112	NA	NA.
	0.0503	0.05254		
	0.02038	0.02867		
Risso's dolphin [1]	0.000672	0.007767	0.0063	0.2881.
	0.04279	0.04545		
	0.001721	0.02316		
Killer whale [2]	Summer	Summer	Summer NA	Summer NA.
	0.000709	0.000709		
	0.000709	0.000709		
	0.000709	0.000709		
	Winter	Winter	Winter NA	Winter 0.0016.
	0.000246	0.000246		
	0.000246	0.000246		
	0.000246	0.000246		
Short-finned pilot whale [2]	0.000307	0.000307	NA	NA.
	0.000307	0.000307		
	0.000307	0.000307		

TABLE 3—ESTIMATED DENSITIES OF MARINE MAMMAL SPECIES IN THE PROPOSED SURVEY OFF THE CENTRAL COAST OF CALIFORNIA, NOVEMBER TO DECEMBER, 2012—Continued

Species	NOAA density [a] (#/km²)		Padre Associates, Inc. density [b] (#/km²)	
	Box 2 minimum maximum mean	Box 4 minimum maximum mean	Transit	Transect
Harbor porpoise [3]	Morro Bay Inshore	Morro Bay Inshore	Morro Bay Inshore	Morro Bay Inshore
	0.43	0.43	0.0259.	0.0016
	4.17	1.42		
	1.83	1.22		
	Morro Bay Offshore	Morro Bay Offshore	Morro Bay Offshore	Morro Bay Offshore
	0.062	0.062	NA.	NA
	0.062	0.062		
	0.062	0.062		
Dall's porpoise [1]	0.000441	0.008552	NA	0.0081.
	0.03504	0.0396		
	0.01433	0.0209		
Pinnipeds:				
California sea lion	NA	NA	NA	NA.
	NA	NA		
	NA	NA		
Steller sea lion	NA	NA	NA	NA.
	NA	NA		
	0.00001	0.00001		
Guadalupe fur seal	NA	NA	NA	NA.
	NA	NA		
	0.00001	0.00001		
Northern fur seal	NA	NA	NA	NA.
	NA	NA		
	0.00001	0.00001		
Northern elephant seal	NA	NA	NA	NA.
	NA	NA		
	0.00001	0.00001		
Pacific harbor seal	NA	NA	0.0166	0.0089.
	NA	NA		
	NA	NA		

NA = Not available or not assessed.
[a] Barlow *et al.* (2009) average density used in calculation.
[1] Density data based on density models of survey area in SERDP program.
[2] Density data based on stratums within SERDP program.
[3] Density data from Caretta *et al.* (2009).
[4] Density data based on stratums within SERDP program with only area ensonified within 1 km from shore calculated.
[b] Padre Associates, Inc. (2011b) (Highest density between transit and track data used).
[c] SERDP Marine Mammal Mapper categorizes small beaked whales as both *Mesoplodon* and *Ziphiidae* genera; whereas, the NMFS Stock Assessment Report has *Ziphiidae* genera whale as their own species assessment and combines only *Mesoplodon* species together.

The proposed 3D survey area varies by survey box (see Table 3 or Table 6 of the IHA application). The anticipated area ensonified by the sound levels of greater than or equal to 160 dB (rms), based on the calculations provided by Greeneridge Scientific, Inc., is a 6.21 km (3.35 nmi) radius extending from each point of the survey area perimeter (hereafter called the buffer zone). This results in a maximum total area as shown in Table 3 (Table 6 and depicted on Figures 11 to 12 of the IHA application). The approach for estimating take by Level B harassment (described in more detail below) was taken because closely spaced survey tracklines and large cross-track distances of the greater than or equal to 160 dB (rms) radii result in repeated exposure of the same area of water. Excessive amounts of repeated exposure probably results in an overestimate of the number of animals ''taken'' by Level B harassment.

TABLE 4—SURVEY AREAS AND SURVEY AREAS WITH 160 dB BUFFER ZONE

Survey box	Survey area (km² [nmi²])	Survey area with 160 dB buffer zone (km² [nmi²])
2	406.0 (118.4)	1,272.3 (370.9)
4	334.5 (97.5)	784.5 (228.7)

L–DEO and PG&E estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeat exposures of the same individuals) can be estimated by considering the total marine area that would be within the

160 dB radius around the operating airguns, excluding areas of overlap. Some individuals may be exposed multiple times since the survey tracklines are spaced close together, however, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa (rms) was calculated by multiplying:

(1) The expected species density (in number/km^2), times

(2) The anticipated area (in Survey Boxes 2 and 4 separately) to be ensonified to that level during airgun operations excluding overlap.

Areas of overlap within each survey box (because of lines being closer together than the 160 dB radius) were combined into one ensonified area estimate and included only once when estimating the number of individuals exposed. However, the full area of each of the two survey boxes were separately used in the take calculations as described below.

Applying the approach described above, approximately 1,237 km^2 (360.7 nmi^2) for Survey Box 2 and 784.5 km^2 (228.7 nmi^2) for Survey Box 4 would be within the 160 dB isopleth on one or more occasions during the survey. The take calculations within a given survey box do not explicitly add animals to account for the fact that new animals are not accounted for in the initial density snapshot and animals could also approach and enter the area ensonified above 160 dB; however, studies suggest that many marine mammals will avoid exposing themselves to sounds at this level, which suggests that there would not necessarily be a large number of new animals entering the area once the seismic survey started. Additionally, separate take estimates were calculated for each survey box, and the two survey boxes do overlap over a relatively large area. This approach for calculating take estimates considers the fact that new animals could have moved into the area, which means that it also considers the fact that new animals could have moved into the area in the time between the end of Survey Box 4 seismic operations and the beginning of Survey Box 2 seismic operations.

L–DEO and PG&E's estimates of exposures to various sound levels assume that the proposed surveys will be carried out in full (i.e., approximately 10 and 14 days of seismic airgun operations for Survey Box 4 and Survey Box 2, respectively), however, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25% to accommodate lines that may need to be repeated, equipment testing, account for repeat exposure, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken.

Table 5 (Table 7 and 8 of the IHA application) shows the estimates of the number of different individual marine mammals anticipated to be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey. For the species that a density was not reported (Barlow *et al.,* 2009), a minimum density of (0.00001/km^2) was used for low probability for chance encounters.

The estimate of the number of individual cetaceans and pinnipeds that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the proposed survey is 2,329 and 511, respectively (2,606 and 639 with 25% contingency) (see Table 14 of the IHA application). That total (with 25% contingency) includes 83 baleen whales, with estimates of 55 gray, 7 humpback, 13 fin, and 8 blue whales, which should represent 0.3, 0.3, 0.4, and 0.3% of the affected populations or stocks, respectively. In addition, 3 dwarf/pygmy sperm whales, 5 killer whales, and 6 beaked whales, (including Cuvier's, Baird's, and *Mesoplodon* beaked whales) could be taken by Level B harassment during the proposed seismic survey. Most of the cetaceans potentially taken by Level B harassment are delphinids; short-beaked common, long-beaked common, Pacific white-sided, northern right whale, bottlenose, and Risso's dolphins, and harbor and Dall's porpoises are estimated to be the most common species in the area, with estimates of 953, 47, 100, 60, 40, 50, 1,513, and 43, which would represent 0.2, 0.2, 0.4 0.7, 0.1/9.6, 0.8, 74, 0.1% of the regional populations or stocks, respectively. The most common pinniped species estimated to be potentially taken by Level B harassment are California sea lions and Pacific harbor seals, with estimates of 597 and 34, which would represent 0.2 and 0.1% of the affected populations or stocks, respectively.

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS ≥160 dB DURING L–DEO AND PG&E'S PROPOSED SEISMIC SURVEYS OFF THE CENTRAL COAST OF CALIFORNIA DURING NOVEMBER TO DECEMBER, 2012

Species	Requested take authorization [i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 μPa] for Box 2 Box 4 (total for Boxes 2 and 4)	Requested take authorization with additional 25% for Box 2 Box 4 (total for Boxes 2 and 4)	Approximate percentage of best population estimate of stock (with additional 25%) [1]
Mysticetes:			
North Pacific right whale	0 0 (0)	0 0. (0).	0 (0).
Gray whale	27 17 (44)	 34 21. (55).	0.2 (0.3).
Humpback whale	3 3 (6)	4 3. (7).	0.3 (0.3).
Minke whale	0 0 (0)	0 0. (0).	0 (0.0).

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS ≥160 dB DURING L–DEO AND PG&E'S PROPOSED SEISMIC SURVEYS OFF THE CENTRAL COAST OF CALIFORNIA DURING NOVEMBER TO DECEMBER, 2012—Continued

Species	Requested take authorization [i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 μPa] for Box 2 Box 4 (total for Boxes 2 and 4)	Requested take authorization with additional 25% for Box 2 Box 4 (total for Boxes 2 and 4)	Approximate percentage of best population estimate of stock (with additional 25%) [1]
Fin whale	6 5 (11)	7 6. (13).	0.4 (0.4).
Sei whale	0 0 (0)	0 0. (0).	0 (0).
Blue whale	3 3 (6)	4 4. (8).	0.2 (0.3).
Odontocetes:			
Sperm whale	0 0 (0)	0 0. (0).	0 (0).
Kogia spp. (Pygmy and dwarf sperm whale)	1 1 (2)	2 1. (3).	0.3 (0.5)—Pygmy sperm whale NA—Dwarf sperm whale.
Baird's beaked whale	1 1 (2)	1 1. (2).	0.2 (0.2).
Small beaked whale (Cuvier's and *Mesoplodon* beaked whale).	2 2 (4)	2 2. (4).	0.2 (0.2)—Cuvier's beaked whale 0.3 (0.3)—*Mesoplodon* beaked whale.
Bottlenose dolphin	14—Coastal 1—Offshore Winter 17—Coastal 0—Offshore Winter (31—Coastal) (1—Offshore Winter)	18—Coastal 1 Offshore Winter 21—Coastal 0—Offshore Winter (39—Coastal) (1—Offshore Winter)	0.1 (0.1)—CA/OR/WA stock 9.6 (12.1)—California Coastal stock.
Striped dolphin	2 2 (4)	2 2. (4).	<0.1 (<0.1).
Short-beaked common dolphin	414 349 (763)	517 436. (953).	0.2 (0.2).
Long-beaked common dolphin	23 14 (37)	29 18. (47).	0.1 (0.2).
Pacific white-sided dolphin	43 38 (81)	53 47. (100).	0.3 (0.4).
Northern right whale dolphin	26 22 (48)	32 28. (60).	0.6 (0.7).
Risso's dolphin	22 18 (40)	27 23. (50).	<0.6 (0.8).
Killer whale	2 1 (3) 3 2. (5).	1.2 (2.1)—Eastern North Pacific Offshore stock. 0.9 (1.5)—Eastern North Pacific Transient stock. 0.9 (1.4)—West Coast Transient stock..	
Short-finned pilot whale	0 0 (0)	0 0. (0).	0.0 (0.0).
Harbor porpoise	895 315 (1,210)	1,119 394. (1,513).	59.2 (74).
Dall's porpoise	18 16 (34)	23 20. (43).	0.1 (0.1).
Pinnipeds:			

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS ≥160 dB DURING L–DEO AND PG&E'S PROPOSED SEISMIC SURVEYS OFF THE CENTRAL COAST OF CALIFORNIA DURING NOVEMBER TO DECEMBER, 2012—Continued

Species	Requested take authorization [i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 μPa] for Box 2 Box 4 (total for Boxes 2 and 4)	Requested take authorization with additional 25% for Box 2 Box 4 (total for Boxes 2 and 4)	Approximate percentage of best population estimate of stock (with additional 25%) [1]
California sea lion	295	369	0.2 (0.2).
	182	228.	
	(477)	(597).	
Steller sea lion	0	0	0 (0).
	0	0.	
	(0)	(0).	
Guadalupe fur seal	0	0	0 (0).
	0	0.	
	(0)	(0).	
Northern fur seal	0	0	0 (0).
	0	0.	
	(0)	(0).	
Northern elephant seal	0	0	(0).
	0	0.	
	(0)	(0).	
Pacific harbor seal	21	26	0.1 (0.1]).
	13	16.	
	(34)	(42).	

NA = Not available or not assessed.
[1] Stock sizes are best populations from NMFS Stock Assessment Reports (see Table 2 in above).

Encouraging and Coordinating Research

L–DEO and PG&E will cooperate with external entities (i.e., agencies, universities, non-governmental organizations) to manage, understand, and communicate information about environmental impacts related to the seismic activities provided an acceptable methodology and business relationship can be agreed upon. PG&E is currently working with a number of agencies and groups to implement monitoring programs to address potential short-term and long-term effects on marine resources within the project area. These study programs include:

- Monitoring activities associated with the California Department of Fish and Game Scientific Collection Permit for Point Buchon Marine Protected Area;
- Nature Conservancy Remotely Operated Vehicle (ROV) Monitoring Program;
- California Collaborative Fisheries Research Program;

Negligible Impact Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As described above and based on the following factors, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death. The factors include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the implementation of the power-down and shut-down measures;

(3) The Morro Bay Stock of Harbor Porpoise Monitoring Plan and Stranding Response Plan will provide real-time data (via aerial surveys and beach monitors) allowing for the early detection of marine mammal (and especially harbor porpoise) behaviors that may indicate an increased potential for stranding. This information will be used to modify, in real-time, any aspect of the activity that could contribute to a marine mammal stranding (e.g., suspension of seismic airgun operations) and the additional evaluation of the situation that will minimize the likelihood of injury or death resulting from the proposed activity;

(4) The Morro Bay stock of Harbor Porpoise Monitoring Plan will also use a combination of aerial and acoustic data to detect whether moderate to large numbers of harbor porpoises have been displaced from their core habitat which could result in serious energetic impacts to individuals if it continued longer than a short time. This information will be used to modify, in real-time, any aspect of the activity (e.g., suspension of seismic airgun operations) that could result in impacts of a more serious nature (e.g., mortality);

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the L–DEO and PG&E's

planned marine seismic surveys, and none are proposed to be authorized by NMFS. Table 5 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given the NMFS and the applicant's proposal to implement a rigorous mitigation, monitoring, and stranding response plans to minimize impacts to the Morro Bay stock of harbor porpoise.

The proposed seismic operations will occur throughout a large portion of the range of the Morro Bay stock of harbor porpoises (i.e., Point Sur to Point Conception, California), and cover much of the core range and optimal habitat for this stock for the duration of the seismic survey. Sighting rates outside of the operational area are much lower, indicating sub-optimal habitat. Studies have shown that harbor porpoises are sensitive to underwater sound and will move long distances away from a loud sound source; and the Morro Bay stock may be forced to move to sub-optimal habitat at the ends of (North or South), or outside their normal range for days to weeks, which may affect foraging success which could in turn have energetic impacts that effect reproduction or survival. This is a coastal species that is primarily found in shallow water within the approximate 100 m (328 ft) isobath and does not move offshore as this is not suitable habitat, and the seismic airgun operations will ensonify a large area that reaches from land to offshore past where harbor porpoises are typically found. This small-bodied species has a high metabolic rate (Spitz *et al.,* 2010) requiring regular caloric intake to maintain fitness and health; therefore, there is a potential for adverse health effects if an animal were forced into an area offering sub-optimal habitat for an extended period of time.

The November to December, 2012, timeframe of the seismic operations will avoid the peak of their breeding season and after the first few months that are critical to nursing mothers and dependent calves. The phased approach, as suggested by NMFS and agreed to by the applicant, of conducting seismic operations within the survey boxes (i.e., Survey Box 4 first, Survey Box 2 second in 2012) over multiple years (i.e., Survey Box 1 planned for 2013) has significantly reduced the anticipated energetic impacts within a given year by spreading them over two years. Further, the required monitoring plans will allow us to assess the degree to which, and in part the amount of time, harbor porpoises may be displaced from their core habitat (and potentially crowded into sub-optimal habitat and adjust, in real time L–DEO and PG&E's activity to minimize the likelihood of population level effects. Silent periods (i.e., no active use of airguns) between conducting seismic operations for Survey Box 4 and Survey Box 2 should allow any displaced animals to return to optimal habitat for foraging and feeding that are necessary for reproduction, nursing, and survivorship; and the required monitoring will allow NMFS to detect whether or not this happens and make a decision about whether PG&E may conduct the second survey (i.e., Survey Box 2) this year.

For the other marine mammal species that may occur within the proposed action area, there are no known designated or important feeding and/or reproductive areas. The gray whale, which has an annual migration route along the coastline, has the potential to occur in the action area during the proposed seismic survey. The southward migration along the West Coast of North America from summer feeding areas in the north generally occurs from November/December through February, while the northward migration from winter breeding areas in the south generally occurs from mid-February through May (with a peak in March). During the southward migration, animals do not approach as close to the coastline and the area of the seismic surveys than they would during the northward migration (especially cows and calves). The proposed end of the seismic survey is designed to coincide with the approximate start of the peak of the annual southward gray whale migration (December 15, 2012), therefore most of the animals will start traveling through after the seismic operations have concluded. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While seismic operations are anticipated to occur on consecutive days, they are broken into two sections of approximately 10 and 14 days, and the monitoring and mitigation is designed such that if serious impacts of a nature expected to have adverse effects on reproduction or survival were detected and thought to be occurring to a significant number of individuals, the second portion of the survey would proceed. Additionally, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for shorter less than day.

Of the 36 marine mammal species under NMFS jurisdiction that are known to or likely to occur in the study area, eight are listed as threatened or endangered under the ESA: North Pacific right, humpback, sei, fin, blue, and sperm whales as well as Steller sea lions and Guadalupe fur seals. These species are also considered depleted under the MMPA. Of these ESA-listed species, incidental take has been requested to be authorized for humpback, fin, blue, and sperm whales. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), L–DEO and PG&E must cease or reduce airgun operations if animals enter designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 25 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 5 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that for species other than the Morro Bay stock of harbor porpoise, the impact of conducting a marine

seismic survey off the central coast of California, November to December, 2012, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species other than the Morro Bay stock of harbor porpoises and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. Although NMFS anticipates the potential for more serious impacts to harbor porpoises, as described above, NMFS believes that the reduced length of the seismic survey (accomplished through the splitting of the originally planned survey over a two year period), the requirement to implement mitigation measures (e.g., shut-down of seismic operations), and the inclusion of the comprehensive monitoring and stranding response plans, will reduce the amount and severity of the harassment from the activity to the degree that it will have a negligible impact on the Morro Bay stock of harbor porpoise.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (off the central coast of California) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the North Pacific right, humpback, sei, fin, blue, and sperm whales. Two pinniped species, the Guadalupe fur seal and eastern stock of Steller sea lion are listed as threatened under the ESA. L–DEO and PG&E did not request take of endangered North Pacific right whales due to the low likelihood of encountering this species during the cruise. Under section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, NSF and L–DEO and PG&E, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both NSF and NMFS's Office of Protected Resources.

National Environmental Policy Act

With L–DEO and PG&E's complete application, NSF provided NMFS a draft ''Environmental Assessment Pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Marine Seismic Survey in the Pacific Ocean off Central California, 2012,'' which incorporates a draft ''Environmental Assessment of Marine Geophysical Surveys by the R/V *Marcus G. Langseth* for the Central Coastal California Seismic Imaging Project,'' prepared by Padre Associates, Inc. on behalf of NSF, L–DEO, and PG&E. The EA analyzes the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the NSF EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the NSF EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

NMFS proposes to issue an IHA to PG&E for conducting a marine seismic survey off the central coast of California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 13, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–22999 Filed 9–14–12; 11:15 am]

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FEDERAL REGISTER

Vol. 77 Wednesday,

No. 182 September 19, 2012

Part IV

The President

Proclamation 8863—National Hispanic Heritage Month, 2012
Proclamation 8864—National Employer Support of the Guard and Reserve Week, 2012
Proclamation 8865—National Farm Safety and Health Week, 2012
Proclamation 8866—National Hispanic-Serving Institutions Week, 2012

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Presidential Documents

Title 3—

The President

Proclamation 8863 of September 14, 2012

National Hispanic Heritage Month, 2012

By the President of the United States of America

A Proclamation

Our Nation's story would not be possible without generations of Hispanics who have shaped and strengthened the fabric of our Union. They have enriched every aspect of our national identity with traditions that stretch across centuries and reflect the many ancestries that comprise the Hispanic community. This month, we celebrate this rich heritage and reflect on the invaluable contributions Hispanics have made to America.

Hispanics have helped shape our communities and expand our country, from laboratories and industry to board rooms and classrooms. They have led movements that pushed our country closer to realizing the democratic ideals of America's founding documents, and they have served courageously as members of our Armed Forces to defend those ideals at home and abroad. Hispanics also serve as leaders throughout the public sector, working at the highest levels of our government and serving on our highest courts.

As we celebrate these hard-fought achievements, we must also remember there is more work to be done to widen the circle of opportunity for the Hispanic community and keep the American dream within reach for all who seek it. From promoting job creation and ensuring Hispanics are represented in the Federal workforce to reshaping our education system to meet the demands of the 21st century, my Administration has built ladders of opportunity. The Department of Homeland Security has lifted the shadow of deportation from talented and patriotic young people who were brought to America as children, giving them a degree of relief so they can continue contributing to our society, and we remain steadfast in our pursuit of meaningful legislative immigration reform.

Whether we trace our roots to those who came here on the Mayflower, who settled the Southwest centuries ago, or who joined the American family more recently, we share a common belief in the enduring promise of America—the promise that regardless of where we come from or what we look like, each of us can make it if we try. During National Hispanic Heritage Month, as we celebrate the successes of the Hispanic community, let us reaffirm our commitment to extending that promise to all Americans.

To honor the achievements of Hispanics in America, the Congress by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 15 through October 15, 2012, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all Americans to observe this month with appropriate ceremonies, activities, and programs.

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

[FR Doc. 2012–23290
Filed 9–18–12; 11:15 am]
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Presidential Documents

Proclamation 8864 of September 14, 2012

National Employer Support of the Guard and Reserve Week, 2012

By the President of the United States of America

A Proclamation

During the 236 years since our fundamental rights to life, liberty, and the pursuit of happiness were first put to paper, ordinary citizens have always stood ready to defend them as members of the United States Armed Forces. Today's service members represent the latest in the long line of heroes who have answered their country's call, and their exceptional service in a post-9/11 world has secured their place alongside the greatest generations. As essential components of our military, the National Guard and Reserve have helped carry that legacy forward. This week, we honor their service and sacrifice, give thanks to their employers, and reaffirm our commitment to giving our troops, our military families, and our veterans the opportunities and support they have earned.

Of the more than 2 million Americans who have gone to war since September 11, 2001, many have been members of the Guard and Reserve. Deployment after deployment, these men and women demonstrate the utmost courage and distinction in the line of duty, putting themselves in harm's way while knowing all too well the full cost of conflict. Members of the Guard and Reserve also serve here at home, stepping in to keep our communities safe when emergencies or natural disasters threaten our security. For their extraordinary sacrifice, our Nation must serve them as well as they have served us—from ensuring they have our fullest support on the battlefield to helping them find good jobs when they come home.

Businesses across America are helping us meet that obligation by hiring and retaining members of the Guard and Reserve, and by creating a culture of military support in the workplace. These employers help keep our service members' civilian careers moving forward, and many demonstrate their invaluable support by ensuring our men and women in uniform—and their families—get the flexibility and care they need during deployment. At a time when our Nation has asked so much of our troops and military families, businesses nationwide are helping them meet the challenges they face and defend the country they love.

America shares a sacred trust with all those who serve in our Armed Forces, and my Administration remains committed to honoring that trust. As part of First Lady Michelle Obama and Dr. Jill Biden's Joining Forces initiative, we have striven to expand employment opportunities for veterans and military spouses, and to help workplaces create environments that support military families. Within the past year, 2,000 companies have hired or trained more than 125,000 service members and military spouses through Joining Forces. With tools like our online Veterans Job Bank, we are connecting veterans to businesses that will put their skills to work. I was proud to sign the VOW to Hire Heroes Act, which created new tax credits to encourage employers to hire veterans. And this July, we announced an overhaul of our transition assistance program that will give departing service members the training they need to find their next job or advance their education and skills.

During National Employer Support of the Guard and Reserve Week, let us pay tribute to the brave men and women who keep our Nation safe and celebrate their devoted employers, whose support is vital to the strength of our military.

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 September 16 through September 22, 2012, as National Employer Support of the Guard and Reserve Week. I call upon all Americans to join me in expressing our heartfelt thanks to the members of the National Guard and Reserve and their civilian employers. I also call on State and local officials, private organizations, and all military commanders, to observe this week with appropriate ceremonies and activities.

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

[FR Doc. 2012–23295
Filed 9–18–12; 11:15 am]
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Presidential Documents

Proclamation 8865 of September 14, 2012

National Farm Safety and Health Week, 2012

By the President of the United States of America

A Proclamation

From producing America's food, fuel, and fiber to advancing clean, homegrown energy solutions, farmers and ranchers play an essential role in driving our country's progress. They keep our economy moving forward, and as important stewards of our environment, they help conserve our lands, protect our wildlife, and safeguard our waters for future generations. During National Farm Safety and Health Week, we celebrate agricultural workers' vital contributions and reaffirm our commitment to keeping them safe on the job.

Farmers and ranchers put in long hours to accomplish difficult tasks—rain or shine. Many operate heavy machinery, handle livestock, and work under hazardous conditions. Because the demands of the job put agricultural workers at high risk of illness and injury, appropriate training and education are critical. I encourage all farming and ranching families to participate in farm safety and health programs, remain aware of the hazards of their working environment, and carry out safe practices every step of the way—from equipment inspection to handling hazardous materials.

Our Nation's rural communities give America its heartbeat. They are home to producers who rise before the dawn, entrepreneurs who bring ideas to market, and working men and women who build the American dream with their bare hands. This week, we honor their tireless efforts and rededicate ourselves to equipping our next generation with the knowledge and training they need to stay safe and healthy.

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 September 16 through September 22, 2012, as National Farm Safety and Health Week. I call upon the agencies, organizations, businesses, and extension services that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge Americans to honor our agricultural heritage and express appreciation to our farmers, ranchers, and farmworkers for their contributions to our Nation.

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

[FR Doc. 2012–23299
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Presidential Documents

Proclamation 8866 of September 14, 2012

National Hispanic-Serving Institutions Week, 2012

By the President of the United States of America

A Proclamation

Equipping our children with the knowledge and skills for a lifetime of success is among our Nation's most important responsibilities. We know that providing the next generation with a world-class education is not just a moral obligation—it is a prerequisite for America's progress in the 21st century. With Hispanics representing more than 20 percent of students enrolled in our public elementary and secondary schools, the opportunities in postsecondary education offered to these young people will have a significant impact on our country's future. Hispanic-Serving Institutions (HSIs) have helped bring the dream of a college education within reach for many Hispanic students and their families, and this week, we celebrate the critical role these colleges and universities play in American higher education.

Across our country, HSIs are giving students access to a quality education and vesting in them a lifelong appreciation for intellectual inquiry. In these halls of higher learning, students are pursuing careers in science and engineering, health care, technology, education, and other fields that will bolster our economic prosperity and foster American innovation for decades to come. Graduates of these institutions are already leaders in every part of our national life, and with these institutions graduating such a significant portion of Hispanic students, HSIs are helping move us closer to leading the world in college completion by 2020.

As we reflect on the contributions of HSIs, let us renew our commitment to preparing our future leaders—from focusing on early childhood education to combating high school dropout rates—and to supporting those institutions that equip students of all backgrounds to take on tomorrow's challenges. By honoring this commitment, we uphold that most American idea: that with a quality education, a child of any race, faith, or station in life can overcome any barriers to achieve his or her dreams.

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 September 16 through September 22, 2012, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the tremendous contributions these institutions and their graduates have made to our country.

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

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H.R. 1402/P.L. 112–170

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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