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WHEN: Tuesday, December 11, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 707, 714, 748, and 749

RIN 3133–AE13

Regulations Affecting Credit Unions; Technical Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is making a number of technical amendments to NCUA's regulations to conform them to the changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and based on NCUA's rolling, three-year regulatory review.

DATES: This rule is effective on November 29, 2012.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Justin Anderson, Staff Attorney, Office of General Counsel, (703) 518–6556, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

I. Background

Why Is NCUA issuing this rule?

The Dodd-Frank Act, among other things, transferred rulemaking authority for many consumer protection regulations from the Federal Reserve Board (FRB) to the Consumer Financial Protection Bureau (CFPB).[1] This transfer required that these regulations be renumbered, which in turn made certain citations in NCUA's regulations inaccurate. The Dodd-Frank Act also transferred rulemaking authority related to the Alternative Mortgage Transaction Parity Act (AMTPA) [2] for state-chartered credit unions from NCUA to the CFPB.[3]

In addition, the Board is taking this opportunity to make amendments, unrelated to the Dodd-Frank Act, based on its rolling, three-year review of NCUA's regulations. The Board reviews one-third of its regulations each year to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' [4] Through this process, NCUA has identified an incorrect citation in Appendix B to part 707 and outdated or unnecessary requirements in NCUA's security and records preservation program requirements in parts 748 and 749.

Accordingly, this rule updates citation references to former FRB rules in parts 701, 707, and 714, and removes the reference to AMPTA in § 701.21(a). The rule also makes technical amendments to parts 707, 748, and 749. The Board is issuing these amendments as a final rule because they are technical in nature and some changes are statutorily mandated by the Dodd-Frank Act.

II. Regulatory Amendments

1. Parts 701, 707, and 714—Updated Citations to CFPB Regulations

This rule updates citations to CFPB regulations in parts 701, 707, and 714. Specifically, in part 701, the Board is amending citations to Regulation B.[5] Similarly, the Board is amending citations in part 707 and in the appendices to part 707 to Regulations E, Z, and DD.[6] In part 707, the Board is clarifying references to the FRB's Regulation D,[7] as the Dodd-Frank Act created a separate Regulation D under the purview of the CFPB.[8] Finally, in part 714, the Board is amending the citation to Regulation M.[9]

2. Section 701.21—AMTPA

This rule removes the reference to AMTPA in section 701.21(a) as required by section 1083 of the Dodd-Frank Act.[10] This reference authorized state-chartered credit unions to follow NCUA's lending regulations for alternative mortgage transactions. Based on the Dodd-Frank Act amendments, state-chartered credit unions must now follow the CFPB's Regulation D for alternative mortgage transactions.[11] Accordingly, the Board is removing the reference to AMTPA in § 701.21(a).

3. Part 707, Appendix B

The rule amends an incorrect citation to the FRB's Regulation D in the note to sample form B–5.

4. Part 748, Appendix A

Part 748 requires a federally insured credit union to develop a written security program and also sets forth Bank Secrecy Act compliance programs and procedures. In 2001, the Board amended part 748 and issued Appendix A to part 748, Guidelines for Safeguarding Member Information, to fulfill a requirement in section 501(b) of the Gramm-Leach-Bliley Act (GLBA).[12] The GLBA directed financial institution regulators, including NCUA, and several other government agencies to consult and coordinate with each other to prescribe consistent and comparable regulations to establish standards for financial institutions relating to certain administrative, technical, and physical safeguards of member records and information.[13]

Included in the 2001 amendments was section III(G) of Appendix A to part 748, which set forth the schedule for implementing Appendix A. All of the dates in the schedule expired at least six years ago. Accordingly, the Board is removing that section of Appendix A to part 748 as the implementation schedule is no longer necessary or helpful to credit unions.

5. Part 749, Appendix A

Part 749 sets out the procedures that federally insured credit unions must follow for records preservation and retention. Section E(1)(c) of Appendix A to part 749 states that credit unions should permanently retain all current manuals, circular letters, and other official instructions of a permanent

[1] Public Law 111–203, sec. 1061.

[2] 12 U.S.C. 3801 *et seq.*

[3] Public Law 111–203, sec. 1083.

[4] NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–02, ''Developing and Reviewing Government Regulations.''

[5] 12 CFR part 1002.

[6] 12 CFR parts 1005, 1026, and 1030.

[7] 12 CFR part 204.

[8] 12 CFR part 1004.

[9] 12 CFR part 1013.

[10] Public Law 111–203, sec. 1083.

[11] 71 FR 44226 (July 22, 2011).

[12] 66 FR 8161 (Jan. 20, 2001).

[13] 15 U.S.C. 6801(b), 6804, 6805.

character received from NCUA and other governmental agencies. This requirement has become outdated. All publications noted in this section are maintained electronically on NCUA's Web site and other governmental agencies' Web sites or are otherwise available to credit unions. Accordingly, the Board is removing this section, which will help reduce the burden and cost on credit unions for the storage and retention of these items.

III. Regulatory Procedures

Final Rule

Generally, the Administrative Procedure Act (APA) requires a Federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical. They make minor changes, some of which are statutorily required by the Dodd-Frank Act. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds good cause that notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.[14] NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.[15] The rule will, therefore, be effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis on any significant economic impact any regulation may have on a substantial number of small entities (primarily those under $10 million in assets).[16] NCUA has determined that these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[17] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. These technical corrections do not impose any paperwork burden.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order to adhere to fundamental federalism principles. This rule 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 because it simply makes technical corrections to existing regulations. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999.[18]

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121)

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the APA.[19] The Office of Management and Budget has determined that this rule is not a ''major rule'' within the meaning of SBREFA.

List of Subjects

12 CFR Part 701

Credit unions, Mortgages.

12 CFR Part 707

Advertising, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

12 CFR Part 714

Credit unions, Leasing.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 749

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 19, 2012.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR parts 701, 707, 714, 748, and 749 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789, Section 701.6 is also authorized by 15 U.S.C. 1601 *et seq.,* 42 U.S.C. 1981 and 3601–3610, Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In § 701.21, revise the fifth sentence of paragraph (a) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

(a) * * * Also, while § 701.21 generally applies to Federal credit unions only, certain provisions apply to loans made by federally insured, state-chartered credit unions as specified in § 741.203 of this chapter. * * * * * * * * * *

§ 701.31 [Amended]

■ 3. In § 701.31, amend paragraph (a)(1) by removing ''12 CFR 202.2(f)'' and adding in its place ''12 CFR 1002.2(f)''.

PART 707—TRUTH IN SAVINGS

■ 4. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

§ 707.3 [Amended]

■ 5. In § 707.3, amend paragraph (c) in two places by removing ''12 CFR part 205'' and adding in its place ''12 CFR part 1005''.

§ 707.11 [Amended]

■ 6. Amend § 707.11 in paragraphs (b)(2)(i) and (c) by removing ''part 226'' and adding in its place ''part 1026''.

Appendix B to Part 707 [Amended]

■ 7. Amend appendix B to part 707 as follows:

■ a. In the fourth sentence of the third paragraph of the General Note by removing the phrase ''as did the FRB'' and adding in its place the phrase ''as articulated'';

■ b. In model clause B–1, first note to section (H), by adding the words ''the

[14] 5 U.S.C. 553(b)(3)(B).

[15] 5 U.S.C. 553(d)(3).

[16] 5 U.S.C. 603(a).

[17] 44 U.S.C. 3507(d); 5 CFR part 1320.

[18] Public Law 105–277, 112 Stat. 2681 (1998).

[19] 5 U.S.C. 551.

Federal Reserve Board's'' between the words ''to'' and ''Regulation.''; and
■ c. In the note to sample form B–5 by removing ''12 CFR 202.4(c)(2)'' and adding in its place ''12 CFR 204.2(c)(2)''.

Appendix C to Part 707 [Amended]

■ 8. Amend appendix C to part 707 as follows:
■ a. In the entry for section 707.2, under ''(a),'' paragraph 5 v by removing ''12 CFR 230.2(u)'' and adding in its place ''12 CFR 1030.2(u)'' and adding to the last sentence the words ''Federal Reserve Board's'' between the words ''in'' and ''Regulation D'';
■ b. In the entry for section 707.2, under ''(s),'' paragraph 1 by removing ''12 CFR 205.2(j)'' and adding in its place ''12 CFR 1005.2(k)'';
■ c. In the entry for section 707.2, under ''(x),'' paragraph 1 heading by adding the words ''*the Federal Reserve Board's''* before the words ''*Regulation D''* and adding in the first sentence of this section the words ''*The Federal Reserve Board's*'' before the words ''*Regulation D permits,*'';
■ d. in the entry for section 707.3, under ''(c),'' paragraph 1 introductory text by removing ''12 CFR part 205'' and adding in its place ''12 CFR part 1005'';
■ e. In the entry for section 707.3, under ''(c),'' paragraph 1 ii by removing ''12 CFR 205.7'' and adding in its place ''12 CFR 1005.7'';
■ f. In the entry for section 707.4, under ''(b)(4),'' paragraph 5 by removing ''12 CFR 205.7'' and adding in its place ''12 CFR 1005.7'';
■ g. In the entry for section 707.6, under ''(a),'' paragraph 2 by removing ''12 CFR 205.9'' and adding in its place ''12 CFR 1005.9'';
■ h. In the entry for section 707.8, under ''(a),'' paragraph 10 i by removing ''12 CFR part 226'' and adding in its place ''12 CFR part 1026'';
■ i. In the entry for section 707.11, under ''(a)(1),'' paragraph 1 1 i by removing ''12 CFR part 226'' and adding in its place ''12 CFR part 1026'';
■ j. In the entry for section 707.11, under ''(a)(1),'' paragraph 2 by removing the words ''the Federal Reserve Board's'' and removing ''12 CFR part 226'' and adding in its place ''12 CFR part 1026'';
■ k. In the entry for section 707.11, under ''(b),'' paragraph 1 i by removing ''12 CFR part 226'' and adding in its place ''12 CFR part 1026'';
■ l. In the entry for section 707.11, under ''(b)'' paragraph 4 by removing ''12 CFR part 226'' and adding in its place ''12 CFR part 1026'';
■ m. In the entry for section 707.11, under ''(c),'' paragraph 1 by removing the words ''part 226'' and adding in its place the words ''part 1026''; and
■ n. In the entry for section 707.11, under ''(c),'' by removing in two places in paragraph 3 ''12 CFR part 226'' and adding in its place ''12 CFR part 1026'' and by removing in two place in paragraph 3 the phrase ''the Federal Reserve Board's'' before the words ''Regulation Z''.

PART 714—LEASING

■ 9. The authority citation for part 714 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1766, 1785, 1789.

§ 714.10 [Amended]

■ 10. Amend § 714.10 by removing ''12 CFR part 213'' and adding in its place ''12 CFR part 1013''.

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

■ 11. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

Appendix A to Part 748 [Amended]

■ 12. Amend appendix A to part 748 by removing paragraph III.G.

PART 749—RECORDS PRESERVATION PROGRAM AND APPENDICES—RECORD RETENTION GUIDELINES; CATASTROPHIC ACT PREPAREDNESS GUIDELINES

■ 13. The authority citation for part 749 continues to read as follows:

Authority: 12 U.S.C. 1766, 1783, and 1789; 15 U.S.C. 7001(d).

Appendix A to Part 749 [Amended]

■ 14. Amend appendix A to part 749 by removing paragraph E.1.(c).

[FR Doc. 2012–28666 Filed 11–28–12; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1056; Directorate Identifier 2012–NE–32–AD; Amendment 39–17271; AD 2012–24–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain serial number (S/N) Rolls-Royce Deutschland Ltd & Co KG (RRD) TAY 620–15 turbofan engines. This AD requires initial and repetitive general inspections and ultrasonic inspections (UI) of low-pressure compressor (LPC) fan blades for cracks. If any fan blade is found cracked, this AD requires replacement of the LPC fan blade set and the LPC fan disc. This AD was prompted by a report of an LPC fan blade separation. We are issuing this AD to detect cracks in the LPC fan blades, which could lead to uncontained failure of the LPC fan blades and LPC fan disc, and damage to the airplane.

DATES: This AD becomes effective December 14, 2012.

We must receive comments on this AD by January 14, 2013.

ADDRESSES: You may send 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.
- *Mail:* 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., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1944; fax: 49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *Frederick.zink@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0185–E, dated September 12, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Fan blade off on a TAY 620–15 engine has recently been reported. Subsequent investigation results identified vibration induced by a fan blade flutter as a possible cause of fan blade root failure leading to blade off.
>
> This condition, if not detected and corrected, could lead to the blade failure potentially causing release of high-energy debris, possibly resulting in damage to the aeroplane and/or injury to the occupants.

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

FAA's Determination and Requirements of This AD

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires initial and repetitive general inspections and UIs of LPC fan blades for cracks. If any fan blade is found cracked, this AD requires replacement of the LPC fan blade set and the LPC fan disc.

FAA's Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–1056 and Directorate Identifier 2012–NE–32–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–24–01 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Amendment 39–17271; Docket No. FAA–2012–1056; Directorate Identifier 2012–NE–32–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 14, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) TAY 620–15 engines, serial numbers 17054, 17085, 17088, 17107, and 17166.

(d) Reason

This AD was prompted by a report of a low-pressure compressor (LPC) fan blade separation. We are issuing this AD to detect cracks in the LPC fan blades, which could lead to uncontained failure of the LPC fan blades and LPC fan disc, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions:

(1) Before further flight after the effective date of this AD, perform a visual inspection and ultrasonic inspection of the LPC fan blades to determine general condition and/or the presence of cracks.

(2) Thereafter, perform the inspections specified in paragraph (e)(1) of this AD within every additional 1,500 flight hours (FHs), but not fewer than 1,000 FHs.

(3) If any fan blade is found cracked, replace the LPC fan blade set and the LPC fan disc before further flight.

(f) Terminating Action

Replacing the LPC fan blade set and the LPC fan disc is terminating action to the repetitive inspections required by this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to 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 Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *Frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

(2) Refer to European Aviation Safety Agency AD 2012–0185–E, dated September 12, 2012, and RRD Alert Service Bulletin TAY–72–A1775, Revision 1, dated September 12, 2012, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; telephone: 49 0 33–7086–1944; fax: 49 0 33–7086–3276.

(4) 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.

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on November 19, 2012.

Robert J. Ganley,

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

[FR Doc. 2012–28638 Filed 11–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1206; Directorate Identifier 2012–SW–021–AD; Amendment 39–17269; AD 2012–23–13]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sikorsky Model S–70, S–70A, and S–70C helicopters, which are restricted category helicopters derived from the military Model UH–60 helicopter. This AD would require reducing or establishing life limits for certain listed helicopter parts. This AD is prompted by a review of the United States Army's analysis of their Model UH–60 fleet, which determined it necessary to establish or reduce the life limits of certain parts. The actions are intended to prevent fatigue failure of a part and subsequent loss of control of the helicopter.

DATES: This AD becomes effective December 14, 2012.

We must receive comments on this AD by January 28, 2013.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Michael Davison, Flight Test Engineer, New England Regional Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7156, email: *michael.davison@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We are adopting a new AD for Sikorsky Model S–70, S–70A and S–70C helicopters. This AD requires reducing or establishing life limits for the main rotor blade, tail rotor blade, planetary carrier assembly, tail rotor servo, elastomeric sleeve bearing, main landing gear shock strut piston cylinder, crossfeed valve, oil cooler axial fan ball bearing assembly, dowel pins, main rotor hub, and right tie rod attach bolt. This AD is prompted by the need to reduce life limits on the specified parts. This determination is based on a review of analysis by the U.S. Army of certain parts installed on the military Model UH–60 helicopters, which shows that the life limits of those parts need to be reduced. The Sikorsky Model S–70, S–70A and S–70C helicopters are restricted category helicopters derived from the military Model UH–60 helicopter. The actions are intended to

establish life limits for certain parts to prevent fatigue failure of a part and subsequent loss of control of the helicopter.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of these same type designs.

AD Requirements

This AD requires, before further flight, establishing or reducing life limits for certain parts and removing from service each part that has reached its life limit.

Costs of Compliance

We estimate that this AD will affect nine helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD.

It will take about 4.7 work hours at $85 per work hour to replace each part plus the required costs per helicopter as follows:

- $70,000 for the main rotor blade,
- $30,000 for the tail rotor blade,
- $490 for the elastomeric sleeve bearing,
- $233 for the right tie rod attach bolt,
- $40,000 for the main rotor hub,
- $12,000 for the main landing gear shock strut piston system,
- $44,000 for the tail rotor servo,
- $200 for the crossfeed breakaway valve,
- $59,000 for the main module planetary carrier assembly, and
- $3,700 for the dowel pins (11 total).

Based on these figures, the total estimated cost is $2,372,607 to replace all the parts for the entire U.S. fleet.

FAA's Justification and Determination of the Effective Date

Since a part must be replaced before further flight if it has reached its life limit and some of the parts may have exceeded or be close to reaching the life limit, this AD must be issued immediately.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

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, 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):

2012–23–13 Sikorsky Aircraft Corporation: Amendment 39–17269; Docket No. FAA–2012–1206; Directorate Identifier 2012–SW–021–AD.

(a) Applicability

This AD applies to Model S–70, S–70A, and S–70C helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as fatigue failure of a main rotor blade, tail rotor blade, planetary carrier assembly, tail rotor servo, elastomeric sleeve bearing, main landing gear shock strut piston cylinder, crossfeed valve, oil cooler axial fan ball bearing assembly, dowel pin, main rotor hub, or right tie attach bolt remaining in service beyond its life limit. This condition could result in loss of control of the helicopter.

(c) Effective Date

This AD becomes effective December 14, 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 Action

Before further flight:

(1) Establish or reduce the retirement life of the following parts listed in Table 1–1 of the Sikorsky Technical Manual TM 1–70–23AW–2, change 3, section 1.1, Airworthiness Limitations, by inserting a copy of Table 1–1 into the Airworthiness Limitations section of TM 1–70–23AW–2 or by making the following pen and ink changes to the Airworthiness Limitations of the maintenance manual:

(i) For each dowel pin on the main transmission housing, part number (P/N) NAS607–10–12P, NAS607–12–14P, and NAS607–12–18P, establish a life limit of 3,000 hours time-in-service (TIS).

(ii) For elastomeric sleeve bearing, P/N SB5203–202, establish a life limit of 720 hours TIS.

(iii) For right tie rod attach bolt, P/N SS5025–04H010, establish a life limit of 3,500 hours TIS.

(iv) For right tie rod attach bolt, P/N SS5025–04H10, establish a life limit of 5,000 hours TIS.

(v) For oil cooler axial fan ball bearing, P/N 210SFFC, installed in oil cooler axial fans, P/N 70361–03005–103 through –106, establish a life limit of 2,000 hours TIS; and for bearings installed in oil cooler axial fan, P/N 70361–03005–107, establish a life limit of 2,500 hours TIS.

(vi) For oil cooler axial fan ball bearing, P/N 210SFFC–0129, installed in oil cooler axial fan, 70361–03005–103 through –106, establish a life limit of 2,000 hours TIS; and for bearings installed in oil cooler axial fan, P/N 70361–03005–107, establish a life limit of 2,500 hours TIS.

(vii) For main rotor hub, P/N 70070–10046–055, establish a life limit of 5,100 hours TIS.

(viii) For main rotor blade, P/N 70080–15001–041, establish a life limit of 5,000 hours TIS.

(ix) For tail rotor blade, P/N 70080–15002–041, establish a life limit of 5,000 hours TIS.

(x) For main rotor blade, P/N 70080–15003–041, establish a life limit of 5,000 hours TIS.

(xi) For tail rotor blades, P/N 70080–15004–041 and P/N 70080–15005–041, establish a life limit of 5,000 hours TIS.

(xii) For main landing gear shock strut piston assembly, P/N 70250–12067–102, establish a life limit of 9,000 hours TIS.

(xiii) For Number 2 crossfeed breakaway valve, P/N 70307–03600–103, establish a life limit of 1,500 hours TIS;

(xiv) For main module planetary carrier assembly, P/N 70351–08175–043, –044, and –045, establish a life limit of 1,400 hours TIS; and for P/N 70351–08175–046 establish a life limit of 12,000 hours TIS.

(xv) For dowel pins, P/N 70351–08404–101, –102, and –103 on main transmission housings, P/N 70351–08110–044 and –045, establish a life limit of 3,000 hours TIS; for dowel pins, P/N 70351–08404–101, –102, –103, and –104 on main transmission housings, P/N 70351–28110–043 and –044, establish a life limit of 7,300 hours TIS; for dowel pins, P/N 70351–08404–101, –103, and –104, on main transmission housings, P/N 70351–38110–043, –044, and –045, establish a life limit of 11,000 hours TIS.

(xvi) For dowel pin, flight control support mounting to main transmission housing, P/N 70531–04805–101, 70531–04805–102, and 70531–08405–103, establish a life limit of 3,000 hours TIS.

(xvii) For dowel pin, flight control support mounting to transmission case, P/N 70351–28404–101, on main transmission housings, P/N 70351–08110–044 and –045, reduce the life limit from 4,300 hours TIS to 3,000 hours TIS.

(xviii) For main module planetary carrier assembly, P/N 70351–38175–041, establish a life limit of 6,500 hours TIS.

(xvix) For dowel pin, flight control support mounting to transmission case, P/N 70351–38404–101, on main transmission housings, P/N 70351–38110–043, –044, and –045, reduce the life limit from 20,000 hours TIS to 11,000 hours TIS.

(xx) For the tail rotor servo, P/N 70410–06520–044, –045, and –046, establish a life limit of 15,000 hours TIS.

(2) Remove from service any part with a number of hours time-in-service equal to or greater than the part's retirement life as stated in paragraph (e)(1) of this AD.

(f) Special Flight Permit

Special flight permits to allow flight in excess of life limits will not be issued.

(g) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Davison, Flight Test Engineer, New England Regional Office, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7156; email: *michael.davison@faa.gov.*

(2) For operations conducted under 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.

(h) Subject

Joint Aircraft Service Component (JASC) Codes: 7921 Engine Oil Cooler, 6210 Main Rotor Blades, 6320 Tail Rotor Head, 6410 Tail Rotor Blades, 6720 Tail Rotor Control System, 3213 Main Landing Gear Strut/Axle/Truck, 2824 Fuel Transfer Valve, and 1430 Fasteners.

Issued in Fort Worth, Texas, on November 2, 2012.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–28427 Filed 11–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. FAA–2011–0763; Amendment No. 43–45]

RIN 2120–AJ91

Pilot Loading of Aeronautical Database Updates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the maintenance regulations by removing from the preventive maintenance category the task of updating databases used in self-contained, front-panel or pedestal-mounted navigation equipment. Further, we are adding text to the maintenance regulations that describes which equipment and, under which conditions, may have aeronautical databases updated by pilots as a non-maintenance function. Equipment which does not meet the criteria outlined in the new regulation will continue to be updated as a maintenance function. This revision will ensure that pilots using specified avionics equipment have the most current and accurate data and thereby increase aviation safety.

DATES: This rule becomes effective January 28, 2013.

FOR FURTHER INFORMATION CONTACT: For technical questions about this rulemaking action, contact Chris Parfitt, Flight Standards Service, Aircraft Maintenance Division—Avionics Maintenance Branch, AFS–360, Federal Aviation Administration, 950 L'Enfant Plaza SW., Washington, DC 20024; telephone (202) 385–6398; facsimile (202) 385–6474; email *chris.parfitt@faa.gov.*

For legal questions about this action, contact Viola M. Pando, Office of the Chief Counsel, International Law, Legislation, and Regulations Division—Policy and Adjudication Branch, AGC–210, Federal Aviation Administration, 800 Independence Ave. SW., Washington DC 20591; telephone (202) 493–5293; email *viola.pando@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part *A,* Subpart III, section 44701(a)(1), section 44703(b)(1)(D), and section 44711(a)(2). In section 44701(a)(1), the FAA is charged with prescribing regulations and minimum standards in the interest of safety for the manner of servicing of aircraft appliances. In section 44703(b)(1)(D), the FAA is charged with specifying the capacity in which the holder of a certificate may serve as an airman with respect to an aircraft. Section 44711(a)(2) prohibits any person from serving in any capacity as an airman with respect to a civil aircraft or aircraft appliance used, or intended for use, in air commerce without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued. This regulation is within the scope of the cited authority.

I. Overview of the Final Rule

This final rule allows all pilots operating aircraft equipped with certificated avionics equipment as described herein to perform updates of aeronautical databases. In 1996, the FAA updated the regulations defining preventive maintenance to include updating the navigation database of self-contained, front-panel or pedestal-mounted navigation equipment. This allowed the holder of a pilot certificate issued under part 61 to perform the database upload on any aircraft owned or operated by that pilot not used under parts 121, 129, or 135 (hereafter refered to as ''restricted operations''). The safety

record established by pilots performing those database updates, the evolution of installed avionics equipment, and the expansion of database use in avionics equipment installed in all classes of certificated aircraft have prompted changes put into effect by this final rule.

In both the 1996 final rule and the NPRM issued for this final rule, the term ''navigation database'' was used. To create harmonization with existing guidance (i.e., Advisory Circular AC 20–153, Paragraph 7—Definitions), the term ''navigation database'' is changed to ''aeronautical database'' in the discussion of this final rule.

This final rule recognizes the installed avionics equipment, the media upon which databases are stored, and the means by which databases are uploaded to the avionics equipment have evolved, and they will continue to do so. Accordingly, language such as ''* * * self-contained, front-panel or pedestal-mounted navigation equipment * * *'' used in the 1996 final rule has been eliminated and replaced by conditions which will enable a pilot or operator to determine which equipment may have aeronautical databases updated by a pilot.

II. Background

The navigation equipment most prevalent in 1996 can, for the sake of discussion, be divided into two categories.

Large transport category aircraft were typically equipped with Flight Management Systems that were comprised of a Control Display Unit on the flight deck and a Flight Management Computer in the electronics bay. These systems were typically updated using a portable dataloader which was connected to the system via a remote connector. These systems required the trained skills and knowledge of authorized maintenance personnel to perform the update.

Some avionics manufacturers had also been manufacturing systems that performed similar functions as those installed on the large transport aircraft, but those systems were small, self-contained units typically installed on the front panel or pedestal in the flight deck of smaller transport category and general aviation aircraft. These systems stored their database on removable media, such as a Secure Digital (SD) card, rather than in resident memory. The database update was accomplished by removing the SD card with the old database and replacing it with the SD card containing the new database.

On May 1, 1996, the FAA issued regulations (61 FR 19498) categorizing pilot-performed updates of navigation databases as preventive maintenance. Pilots operating aircraft under parts 121, 129, and 135 by regulation are not permitted to perform preventive maintenance, and therefore, those pilots could not update navigation databases. The FAA determined at that time that navigation database updates presented some risk when performed by a pilot on a part 121, 129, or 135 aircraft because they were typically equipped with more sophisticated equipment that required special tools (a portable dataloader) and skills to update. However, as a result of pilot-performed updates, pilots of aircraft used in non-restricted operations received the benefit of having the most current aeronautical data available at all times. Much like this final rule, the 1996 final rule was the FAA's first step toward bringing the regulations up to date with technology.

Since implementation of the 1996 final rule, the FAA regularly receives petitions for exemption from parts 121, 129, and 135 operators requesting relief from the requirement for authorized personnel to perform database updates. The FAA has considered the history of successful and easily-performed, incident-free pilot updates of databases established on aircraft used in non-restricted operations. As a result, the FAA has determined that safety-based reasons no longer exist to justify the requirements for authorized maintenance personnel to perform database updates on aircraft based upon a regulatory operating part rather than by the design of the installed avionics equipment.

A. Statement of the Problem

Since implementation of the 1996 final rule, installed avionics equipment has continued to evolve. Manufacturers developed systems for large transport category aircraft that make use of a permanently-installed dataloader as part of the certificated system. These systems eliminate the need for use of special tools (portable dataloaders) to initiate a database update.

Similar systems, and the self-contained systems discussed above, have come into prevalent use on smaller aircraft, from general aviation aircraft to business jets. Under current regulations, a pilot operating such an aircraft under part 91 may update databases, while a pilot of the same type of aircraft with the same installed avionics equipment operated under parts 121, 129, or 135 cannot update databases.

At this time, newly-manufactured aircraft—such as the Boeing 787, Airbus A380, and others—are equipped with technology such as the Gatelink system which enables wireless updating of systems and databases. The current regulation does not accommodate such advances in technology; this final rule does. While the FAA recognizes the need to allow for future technologies, the FAA also recognizes its inability at this time to predict what those technologies may be. As such, certification of future systems must include evaluation of the methods, means, and materials required for performing aeronautical database updates. Such equipment must be designed and certified in a manner that allows clear determination by a pilot or operator of whether or not the system can be updated by a pilot under this final rule, or must be updated by authorized maintenance personnel.

The current requirement for authorized personnel to perform updates, as it applies to avionics equipment described in this final rule, can no longer be justified based on safety concerns. It imposes unnecessary operating costs and operational inefficiencies on certificate holders conducting operations under parts 121, 129, and 135. To comply with operating regulations, such as those under part 91.503, these operators must ensure the required database is current. Updates are performed within a prescribed cycle to ensure currency, which is not always possible if the database expires when the aircraft is away from the home base or at a station where authorized maintenance personnel are not available. Operational costs are increased for the certificate holder whenever an aeronautical database expires while the aircraft is en route. If the aircraft is en route and located where authorized personnel are not available to perform the update, the operator has three options: (1) Operate the aircraft with an expired database, (2) reroute the aircraft to an authorized repair station, or (3) transport an authorized mechanic to the aircraft's location. Each of these options imposes additional operational costs in terms of operational restrictions, manpower and fuel consumption.

If the aircraft is operated with an expired database, the pilot must adhere to operational restrictions, which automatically prohibits the use of certain routes within the National Airspace System, resulting in the use of a less direct route to the destination. If the aircraft is rerouted to a repair station, or authorized personnel are transported to the aircraft's location, the operator must absorb the costs of additional fuel consumption, and valuable time can be lost locating mechanics and transporting them to the aircraft. This is particularly true for

operations conducted in remote areas where traveling greater distances to repair stations would be required. Exercising any one of the above-noted options increases the pilot's workload by requiring the selection of alternate routes appropriate for an expired database. Air traffic controller workloads are also increased when the aircraft is re-routed because certain routes are only available to aircraft using the current database for any given period. At a minimum, the operator must facilitate the transport of authorized personnel to the location of the aircraft. Eliminating the requirement for approved personnel will increase operational efficiency for certificate holders and contribute to reduced air traffic control and pilot workloads.

The stated problem is that the regulations have fallen behind technology and fail to address the pervasive use of installed avionics dependent upon aeronautical databases. This final rule acknowledges the evolution of technology by removing the task of pilot-performed updates of databases in certain installed avionics from the preventive maintenance regulations and by allowing pilot-performed updates of databases in accordance with new regulatory requirements. Differences between this final rule and its NPRM are the result of the recommendations made by commenters in response to the NPRM, which are discussed in greater detail below.

A benefit from the final rule will be a reduction in the FAA's issuance of grants of exemption to parts 121, 129, and 135 certificate holders seeking relief from the requirement for authorized maintenance personnel to perform the updating task. The FAA's workload has been impacted by the regular receipt of petitions for exemption requesting that pilots be allowed to perform updates. The increased workload has impacted the FAA's ability to more efficiently process petitions for exemption. Delaying the issuance of a justified exemption, where safety is not compromised, forces eligible certificate holders to continue paying for unnecessary services by authorized personnel and bear the resulting operational inefficiencies and increased costs. This final rule resolves these issues by eliminating the requirement for parts 121, 129, and 135 operators to use authorized personnel to update databases in the avionics equipment described herein.

B. Summary of the NPRM

The FAA proposed to amend the part 43 maintenance regulations in the NPRM (76 FR 64859, October 19, 2011), by removing the task of updating databases used in self-contained, front-panel or pedestal-mounted navigational equipment from the preventive maintenance category. The primary intended effect of the proposal was to enable regular use of the most current and accurate navigational data by allowing pilots using navigation units to perform database updates as they became due. Specific regulatory text was included to restrict the type of equipment eligible for pilot-performed updates, including requirements for the pilot to receive appropriate training and to verify the upload status to determine if minimum equipment list (MEL) restrictions need to be followed.

C. Differences Between NPRM and Final Rule

The final rule represents a departure from the NPRM in terms of the description of the equipment eligible for pilot-performed updates. In addition, the regulatory text has been modified from the originally-proposed text to permit pilot-performed updates on all certificated aircraft upon compliance with the certificate holder's procedures or the manufacturer's instructions. The changes from those proposed in the NPRM arose directly from suggestions made by commenters in response to the NPRM.

D. Overview of Comments Received

The comment period for the NPRM closed on December 19, 2011. We received comments from 52 commenters raising a total of seven substantive issues. Commenters to the NPRM represented aviation associations, manufacturers of avionics equipment, aircraft operators, owners, and other individuals. The commenters, in general, expressed support for the proposed rule change. Some commenters supplied alternative recommendations, as discussed more fully in the ''Discussion of the Final Rule'' below.

The FAA received comments regarding the following proposals:

- Relocation of the requirement from 14 CFR part 43 to other CFR parts (since performing the updates would no longer be preventive maintenance);
- Recordkeeping requirements;
- Training for pilots;
- Technological advancements in data-transfer mechanisms and methods;
- Limitation on types of media that could be used for storing data;
- Inconsistent references to terrain databases; and
- Possible labor-management issues.

III. Discussion of the Final Rule

The final rule is consistent with the NPRM to the extent that they both authorize pilot-performed updates on all certificated aircraft operating under parts 121, 129, and 135.

Performing database updates on avionics systems that require tools or special equipment to accomplish the data transfer continues to be maintenance and requires that approved personnel perform the update.

Upon issuance of this rule, all pilots operating appropriately-equipped aircraft will be permitted to perform database updates in accordance with the certificate holder's or manufacturer's instructions. To comply with the requirements of 14 CFR 43.3(k)(iv) and (v), the certificate holder will be required to revise the existing procedures for updating the database in its manual. This information will replace or augment the operator's existing database updating procedures. Pilot-owners of general aviation aircraft will be required to include the manufacturer's instructions in their pilot's handbook or flight manual.

Requirements and procedures for performing database updates are established by the aircraft or avionics manufacturer in coordination with the FAA at the time of certification for its use on the aircraft. If a manufacturer designs a system that an aircraft owner or operator would determine meets the criteria for pilot-performed updates of databases under the conditions of the rule but, due to system criticality or other factors, that system should only be updated by authorized maintenance personnel, the manufacturer must specify that requirement in its instructions for continued airworthiness (ICA). The ICAs that include these procedures will be accepted by the FAA.

Under the final rule, if performing an update would require special access to installed equipment, or use of tools or special equipment, then the task must still be performed by authorized personnel under the provisions of part 43 as maintenance, and all pertinent maintenance regulations would apply. Operators may continue to use authorized maintenance personnel or facilities to perform the database updates even if the avionics meet the criteria of this rule.

Commenters, including Garmin International (''Garmin'') and the Aircraft Electronics Association (AEA), stated that the proposal to remove database updates from the preventive maintenance category, without placing them in another category, would have

resulted in database updates becoming maintenance tasks. The commenters asserted that doing so would place more burdens on operators.

We considered the commenters' concerns and determined that the problem they identify can be resolved by drafting § 43.3(k) differently. We have removed paragraph (c)(32) of Appendix A to part 43, which pertains to updating navigation databases of certain equipment installed on aircraft operated under non-restricted operating regulations. Updating aeronautical databases will not be regulated as maintenance on specified equipment in accordance with the requirements set forth under the new paragraph (k) in § 43.3. Updating databases of other installed avionics has been, and will continue to be, conducted as maintenance under part 43.

An anonymous commenter recommended that regulations relating to updating databases should be placed under the applicable operating parts (i.e., parts 121, 129, and 135) as preflight duties and should also require pilot training. In general, we rejected these recommendations because specified avionics systems are approved for use on all certificated aircraft regardless of the regulations under which the aircraft is operated. The intended effect of this rule change is to regulate pilot-performed database updates by installed avionics equipment type, rather than by the operating regulations under which flights are conducted.

Several commenters, including Garmin, the Aircraft Electronics Association (AEA), NetJets, and the Aircraft Owners and Pilots Association (AOPA), stated that a definition for databases approved for pilot-performed updates would, in effect, create a barrier to the use of newer technology and would restrict the selection of databases approved for use during pilot-performed updates to those approved under the 1996 final rule, namely navigation and communication. AOPA suggested that the FAA should write the rule to accommodate later developments in database capabilities. These commenters recommended we adopt the definition of ''aeronautical database'' contained in AC 20–153A. Along the same lines, one commenter recommended that the FAA should define ''[air traffic control] ATC navigational software data'' because today many databases include active terrain and obstacle information.

We agree. To address this concern, aeronautical information service databases will be authorized for use at the time of certification in accordance with guidance provided in AC 20–153A. The rule will not limit database use based on subject-matter descriptions, unlike the 1996 final rule, which specifically addressed ATC navigational software, thereby limiting database use to that single subject matter.

Universal Avionics, Honeywell International, Inc. (''Honeywell''), and Garmin stated that the description used in the NPRM for approved nav-systems would exclude the use of newer systems and data-transfer mechanisms such as those employing wireless technology. In the NPRM, we used the term ''nav-systems'' to describe aeronautical information avionics devices that are self-contained, front instrument panel-mounted ATC navigational software database systems.

The FAA agrees with these commenters. It is our intention for this rule to be equipment based and allow accommodation of emerging technology. Therefore, we have changed the description of the avionics devices that will be eligible for pilot-performed updates. The NPRM used the same description provided in the 1996 final rule, basically, ''self-contained, front instrument panel-mounted and pedestal-mounted ATC navigational system databases—excluding those of automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME), and any updates that affect system operating software—that require no disassembly.'' In this final rule, we are approving pilot-performed updates of installed avionics if the equipment is approved by the Administrator and does not require the use of tools or special equipment. Data-transfer mechanisms, database storage media, and usable subject databases will be determined by the FAA and manufacturer at the time the device is certificated for use on the aircraft.

These same commenters and some other commenters, expressed concern about system integrity in terms of how data would be protected with the newer avionics. This rule does not address the manufacture of avionics equipment or the development of usable databases, and, as such, protection of data integrity goes beyond the scope of this rule. Nonetheless, we note that new technologies approved for use on aircraft will be developed with attention to data integrity. Current technology uses databases which are developed in accordance with standards developed by Aeronautical Radio, Inc. (ARINC), which has been the world standard since 1975. These standards have proven effective in preserving data integrity. Moreover, protection for the integrity of the system and data will continue to be addressed under existing regulations by applicable design, production, installation, and certification approvals. In all cases, the FAA will work with the manufacturer to ensure the highest level of integrity for aeronautical data and data-transfer mechanisms.

Another individual commenter stated that the phrase used in the NPRM ''files that are 'non-corruptible' upon loading,'' is very confusing. We agree, the phrase ''files that are non-corruptible, upon loading'' is confusing and we have omitted this language from the final rule. To address the same issue with greater clarity, the final rule requires that to be eligible for pilot-performed updating, written procedures must be provided to the pilot performing the updates. Those procedures will identify the status verification function as defined by the system manufacturer.

One individual commenter asked when updates can be installed and/or used. The commenter stated that whether disks are mailed to the user or downloaded, they are available about 10 days before the due dates. In this matter, the pilot-operator performs the update in accordance with the manufacturer's instructions, which should address any limitations, or contact the manufacturer if the instructions do not address the point to inquire whether loading the updated database prior to the effective date would negatively impact system performance.

Several commenters, including AOPA and NetJets, were concerned about the requirement for the pilot to record each update in a maintenance logbook. AOPA expressed concern that the NPRM proposed a requirement that would create a second recordkeeping requirement and that the return to service maintenance entry required by § 43.7 would need to be completed by ''qualified personnel.'' NetJets recommended that the FAA specifically state in the final rule preamble that no aircraft maintenance entries or signatures are required when pilots perform aeronautical database updates. We have considered the comments and agree that it is unnecessary for the pilot to make a record of the update. Recordkeeping requirements for the pilot have been eliminated. The current regulations do not require pilot-owners to record each update in a maintenance logbook, and the absence of such a requirement has not been problematic.

Honeywell and NetJets suggested that the FAA focus on the device used to provide aeronautical information services instead of how the device is installed (i.e., ''self-contained, front-

instrument panel-mounted and pedestal-mounted''). The commenters were not as concerned with how the device was installed as with how the device received data uploads. This point was captured by one commenter who stated, ''[A]lthough most of the systems have cards that are accessible from the 'front' of the unit, they [can] also have [a] system that updates by accessing data stored on a 'medium' read by a Data Transfer Unit (DTU), and DTUs can be installed almost anywhere in the aircraft [sic].''

We agree. Data-transfer mechanism designs are constantly evolving. In 1996, floppy disks inserted in portable dataloaders externally connected to the processor were commonly used to update databases. Today, floppy disks are still used in those installed systems that have not been replaced, but floppy disks are not used by currently-produced systems. Instead, we see the pervasive use of permanently installed data-transfer mechanisms. These mechanisms can include a slot for an SD card, an installed dataloader, or even wireless technology. Pilots will not be permitted to update databases of installed avionics that use portable dataloaders such as those used with the older navigational systems installed on large transport category aircraft.

We have extended the rule to allow all certificated data-transfer mechanisms, but we specifically exclude means of data transfer that require physical connection to installed equipment such as portable dataloaders and laptops.

The National Air Transportation Association (NATA) stated, ''When the FAA proposes new regulations affecting air carrier aircraft that require actions by authorized maintenance personnel, the agency does not consider as a benefit the fact that certificated mechanics and repair stations will get more work. Therefore doing the opposite, considering, as a cost, the loss of business when the FAA deems a requirement is no longer applicable or necessary, should not occur either.''

The FAA concurs. The FAA merely noted that the rule could affect certain parties. The FAA did not state that such effects are a cost of the rule and did not ascribe any such cost to the final rule. It bears noting that this rule is permissive; thus, certificate holders are not required to approve pilot-performed updates on their operations.

The Air Line Pilots Association (ALPA) submitted the only direct objection to this rulemaking for labor-management reasons. The objections are set forth below followed by our response.

ALPA stated that because of the high level of safety achieved by commercial aviation, airline travel in the U.S. and Canada has been accomplished by the use of highly trained professionals and technical specialists performing their respective tasks in a coordinated and disciplined fashion. ALPA contends that the proposal would make airline pilots responsible for certain additional aircraft maintenance and maintenance recordation functions that should continue to be properly performed by maintenance and ground support personnel.

We agree that this final rule will give operators the option to impose the additional responsibility to perform the update on pilots. However, the pilot-performed updates are allowed only on avionics equipment where the process of updating is simplified to a point where it can be performed quickly and easily. Significantly, database uploads that require the special skills or training or the use of tools or special equipment will continue to be a maintenance task that authorized personnel must perform.

In addition, as discussed below, we have removed all recordkeeping requirements for pilots who perform these updates. We do not agree with implicit concern that allowing pilot-performed updates in any way diminishes safety. As we discussed earlier, at the certification level continuing measures will be taken to ensure that safety will not be compromised. Also, as stated earlier, the FAA has not received any incident reports stating that a pilot's failure to make a maintenance logbook entry for performing the database update has had any impact on aviation safety.

ALPA also contends that the philosophical shift in airline operational tasks and definitions of employee roles, which this rulemaking represents, would give rise to a number of issues that would negatively impact airline pilots and justify rejection. ALPA stated airline operations depend on quick turn-arounds for on-time departures. Giving pilots an additional task in the form of updating navigational systems while they endeavor to achieve an on-time departure would create additional time pressure and could result in greater risks of errors in all cockpit duties.

We note the final rule is permissive in nature. Operators have the option to require that maintenance personnel perform the database updates. However, we again emphasize that pilot-performed updates on applicable avionics equipment is a very simple task that will take only a couple minutes to perform, as the system is largely automated.

ALPA also states that pilots would assume a new and additional responsibility for which no training is approved, including: (1) Obtaining the storage media from someone within the company in a timely fashion, (2) safeguarding the media while in their possession so that it is not lost, stolen, or damaged, (3) properly loading the updates into the nav-system, (4) recording the updates in maintenance logs and/or other documents, and (5) returning the storage media to the appropriate individual within the company when the update is completed, as required.

Whether training is required will be a determination made by the FAA, the operator, and the manufacturer. In any case, minimal training will be necessary because of the nature of the equipment, and the pilot's current familiarity with the system. Media-storage issues have not changed and will continue to be the certificate holder's responsibility as the subscriber to the database service, and thus, the operator would be responsible for providing the updates to the pilot. Protection of the data would not require special skills or action because data is stored on media similar to an SD card or flash drive. Further, post-update security is not an issue because the data on the storage media would have no useable value. Finally, we have eliminated the proposal to have recordkeeping requirements. We therefore believe the concerns raised by ALPA have all been addressed.

ALPA states that provisions in current collective-bargaining agreements could make the assumption of the responsibility for updating aeronautical data impossible for pilots at a particular carrier, as updating may not be included within the scope of pilots' responsibilities. At a minimum, this proposal could result in labor-management contention.

We do not believe the FAA's role is to intervene between management, labor, and collective-bargaining units on issues arising from a permissive rulemaking. Should issues arise related to compliance or concerning FAA expectations with this final rule, we would provide guidance or legal interpretation upon request.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation

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

In conducting these analyses, the FAA determined that this rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures, (4) will not have a significant economic impact on a substantial number of small entities, (5) will not create unnecessary obstacles to the foreign commerce of the United States, and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

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

The rule is permissive in nature and will provide relief to all operators of certificated aircraft who elect to allow pilot-performed updates, rather than to pay for services of an authorized repair station or mechanic. The rule eliminates the requirement that only repair stations and authorized mechanics can perform database updates and allows pilots to perform the update on avionics equipment approved by the Administrator and described herein. Allowing pilots to perform the updates will save the operator the expense of either making a positioning flight to a repair station or transporting an authorized mechanic to the aircraft to perform the update. Public comments on the proposed rule supported this change and there were no contrary comments to the economic analysis in the Regulatory Evaluation.

Using the cost information supplied by commenters, who provided the only available data for assessing the impact of this rule, the FAA has determined that this rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and this rule is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Total Estimated Benefits and Costs of This Final Rule

The two benefits from this rule will arise from increased safety and reduced operational costs. The primary safety benefit is that affected aircraft operators will no longer be forced to occasionally operate aircraft without the most current aeronautical database when the database expires and authorized personnel are not available to perform the update. A corollary safety benefit is a reduction in workloads for pilots and air traffic controllers, which accrues a benefit to the aircraft operator and to air traffic control. As previously discussed, the use of avionics systems contributes to increased safety in four respects: (1) By providing the pilot with accurate aeronautical information; (2) by increasing access to airports under less than optimal flight conditions; (3) by increasing workforce efficiency for both the aircraft pilot and air traffic control; and (4) by generating more efficient use of the airspace system.

Avionics systems databases are generally updated every 28 days, although some are updated as often as every 14 days. The current regulations allow only pilots of aircraft operated under non-restricted operating regulations to perform the database update; all other operators (i.e. those operating under parts 121, 129 and 135) must have an authorized repair station or mechanic perform the update. This requirement creates a problem for operations conducted under part 121, 129, 135 and other restricted operators if the database expires when the aircraft is en route or at a remote location and authorized personnel are not available to perform the update. If the database expires, the aircraft operator/pilot has one of three choices: (1) Fly the aircraft to a location where authorized personnel are available; (2) fly authorized personnel to the aircraft; or (3) operate the aircraft under MEL restrictions, which limits the pilot's options in terms of routes flown and airport accessibility. Each of the three options results in added operational costs in terms of man-hours and additional and increased fuel costs. Reducing the number of unnecessary aircraft operations conducted due to an expired database eliminates increased pilot and ATC workloads associated with re-vectoring flights or transporting authorized personnel to perform updates.

One commenter reported that its airplanes averaged 1.25 operations a year per aircraft under MEL because the aeronautical database upload had to be deferred until the aircraft could reach a repair station. Another commenter reported that its fleet of 12 aircraft had to operate between 10 and 15 times a year flying under MEL because certificated maintenance personnel were unavailable at the remote location where the aircraft was when the aeronautical database needed to be updated.

Pilots of non-restricted operations have been performing database updates on these types of avionics systems since 1996 and the FAA knows of no accidents or incidents attributable to errors by these pilots from performing these updates. Today, aircraft operated under all parts of the regulations are regularly equipped with avionics systems whose database update procedures are similar to those used by pilots who perform database updates on aircraft in non-restricted operations. The ease of pilot-performed updates combined with the absence of any accidents or incidents provides ample evidence that all pilots flying aircraft equipped with appropriate avionics devices should be permitted to perform updates. Consequently, allowing pilots of restricted operations to perform updates will reduce the numbers of route-restricted flights required by reason of an expired database.

The second benefit will be cost savings to the operators. Allowing their pilots to update aeronautical databases eliminates the costs associated with paying authorized personnel to perform the task and the costs of a positioning flight to a repair station, or transporting a certificated mechanic to the aircraft to install the update. In practice, the costs of having authorized personnel perform database updates are minimal because the task would be performed concurrent with a number or other tasks as part of a maintenance service. Even when done specifically to update the database, the

cost is relatively small. This conclusion is supported by reports received from commenters stating that the rule would generate such cost savings. However, only one commenter provided an estimate of the cost of a positioning flight, which was an average of $7,700 from the components of crew costs, fuel costs, and lost revenue. In a clarifying comment to the FAA, that commenter reported that during 2011 its airplanes incurred $514,333 in direct crew costs and fuel costs for positioning flights solely to update aeronautical databases. This commenter also reported that its 600 aircraft made 218 of these positioning flights, which is an average of about 0.36 positioning flights per year per aircraft. Thus, its reported average cost per positioning flight was about $2,360.

In the Initial Regulatory Evaluation for the proposed rule, the FAA estimated that the cost of a single positioning flight ranges between $1,000 and $2,500 and that the cost to transport a certified mechanic to an aircraft is similar. The FAA has determined that its initial estimate was reasonable. However, the FAA cannot use one commenter's statement to quantify a total societal cost-savings from this rule for two reasons. The first reason is that this operator's experiences may not be typical of all the operators that will be affected by the rule. The second reason is that the FAA does not know the number of existing aircraft or the numbers of future aircraft that will have aeronautical database systems that will be affected by the rule. Nevertheless, given the number of commenters who did state that they would receive cost savings from the rule, the FAA concludes that the rule will result in reduced man-hours and fuel costs by reducing the numbers of positioning flights required solely to update the databases.

A third benefit is that the final rule, which will allow all pilots operating appropriately equipped aircraft to perform database updates, which will also pave the way for future technologies. Certification regulations make approval of new devices contingent upon conforming to established criteria for approved equipment, which imparts flexibility allowing the use of newer devices.

In the Initial Regulatory Evaluation, the FAA determined that the proposed rule would impose minimal costs because it would allow a pilot to upload the current database; a task that currently imposes an additional cost on the operator who must have the update performed by a certificated mechanic or in a repair station. The comments received in response to this issue support the FAA's determination.

C. Who is affected by this rule?

This rule affects all operators of certificated aircraft equipped with installed avionics that: (1) Have a pilot accessible data transfer mechanism permanently installed on the flight deck; (2) can be updated without the use of tools, and (3) is programmed to provide a data load status. This rule will also affect maintenance personnel and repair stations that parts 121, 129, and 135 operators were previously required to pay for updating databases.

D. Sources of Information

The primary sources of information were the commenters, which included part 135 operators, part 121 operators, aircraft electronics manufacturers, an aircraft electronics association representative, a pilot union, and several individuals.

E. Regulatory Flexibility Determination

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

Agencies must perform a review to determine whether a final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare an initial regulatory flexibility analysis as described in the RFA. However, if an agency determines that a final rule will not have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The net economic impact of this rule will provide regulatory cost relief. As this rule will reduce costs for some small entities, the acting FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

F. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. We assessed the potential effect of this rule and determined that it will not constitute an obstacle to the foreign commerce of the United States, and, thus, is consistent with the Trade Assessments Act.

G. Unfunded Mandates Assessment

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

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no information collection burden associated with this final rule.

I. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to

comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

J. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) of the Order and involves no extraordinary circumstances.

K. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in 14 CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions.

The final rule would also provide an incremental benefit to aircraft providing air transportation to remote parts of Alaska by relieving pilots from having to fly with operational restrictions when the database expires.

V. Executive Order Determinations

A. Executive Order 12866

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

B. Executive Order 13132, Federalism

The FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, will not have federalism implications.

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

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant regulatory action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

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

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter 1 of Title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 1. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

■ 2. Amend § 43.3 by adding new paragraph (k) to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(k) Updates of databases in installed avionics meeting the conditions of this paragraph are not considered maintenance and may be performed by pilots provided:

(1) The database upload is:

(i) Initiated from the flight deck;

(ii) Performed without disassembling the avionics unit; and

(iii) Performed without the use of tools and/or special equipment.

(2) The pilot must comply with the certificate holder's procedures or the manufacturer's instructions.

(3) The holder of operating certificates must make available written procedures consistent with manufacturer's instructions to the pilot that describe how to:

(i) Perform the database update; and

(ii) Determine the status of the data upload.

■ 3. Amend Appendix A to part 43 by removing paragraph (c)(32).

Issued in Washington, DC, on October 12, 2012.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2012–28845 Filed 11–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 121009527–2527–01]

RIN 0694–AF80

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding two persons to the Entity List and revising one existing entry. 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 one destination. The two entries added to the Entity List consist of two entries in Pakistan. This rule is also revising one existing entry in the U.A.E. to clarify the scope of the entry by providing an additional alias and alternate address for this listed person.

The Entity List notifies the public that certain exports, reexports, and transfers (in-country) of items subject to the EAR to entities identified on the Entity List require licenses from the Bureau of Industry and Security (BIS) and that in most instances license exceptions are unavailable for such transactions. BIS usually applies a license review policy of denial because it considers such entities to present significant risks of diversion to weapons of mass destruction (WMD) programs, terrorism, or other activities that are contrary to U.S. national security or foreign policy interests. By publicly listing such entities, BIS seeks to assist legitimate exporters, reexporters and transferors, and other parties participating in transactions that are subject to the EAR by providing them with information to detect and avoid high risk transactions with those entities, which in most cases means any transaction that involves items that are subject to the EAR.

DATES: *Effective Date:* This rule is effective November 29, 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) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List and the availability of license exceptions is noted in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where 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 two persons to the Entity List on the basis of § 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 two entries added to the Entity List consist of two entries in Pakistan.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these two persons to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they 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 § 744.11. Paragraphs (b)(1)–(b)(5) of § 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 two persons being added under Pakistan, Mohammad Azam and Azam Electronics, are believed to have been involved in activities described under paragraphs (b)(1) and (b)(2) of § 744.11. Mohammad Azam owns and directs Azam Electronics in Chaman, Pakistan. There are entities operating in Chaman, Pakistan, that support violent extremist organizations that use Improvised Explosive Devices (IEDs) in Pakistan and Afghanistan to further their terrorist-related objectives. Electronic components sourced from Azam Electronics are used as triggering devices in IEDs that are being used in Afghanistan and Pakistan.

For the two persons added to the Entity List and the one modified entry described below, 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 two persons to the Entity List:

Pakistan

(1) *Azam Electronics,* a.k.a., the following two aliases:

—Mohammad Azam Electronics, *and*

—Akram Dish TV Satellite Center, Chaman, Killa, Abdullah District, Baluchistan Province, Pakistan; *and*

(2) *Mohammad Azam,* a.k.a:

—Mohammad Akram, Chaman, Killa, Abdullah District, Baluchistan Province, Pakistan.

Modification to the Entity List

On the basis of a decision made by the ERC, in addition to the two Pakistani additions described above, this rule amends one entry currently on the Entity List under the U.A.E. The amendments provide one additional alias and one alternate address for this listed person, as follows:

United Arab Emirates

(1) *Infotec,* a.k.a., the following two aliases:

—Info Tech, *and*

—I. Tec Trading FZE, P.O Box 10559, Ras Al Khaimah, U.A.E.; *and* Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.

Revision of Authority Citation for Part 744

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. The authority for authority for parts 730, 734, 736, 742, 744 and 745 of the Export Administration Regulations (15 CFR parts 730–774) rests in part on that executive order and the annual notices continuing the international emergency declared therein. This rule revises the authority citations paragraph to part 744 of the EAR (15 CFR part 730) to include citations to the President's Notice of November 1, 2012—Continuation of the National Emergency With Respect to Weapons of Mass Destruction (77 FR 66513, November 5, 2012), which is the most recent such annual notice.

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 November 29, 2012, 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 other measures 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. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

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 revised 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 January 19, 2012, 77 FR 3067 (January 20, 2012) Notice of August 15, 2012, 77 FR 49699 (August 16, 2012); Notice of September 11, 2012, 77 FR 56519 (September, 12, 2012); Notice of November 1, 2012, 77 FR 66513 (November 5, 2012).

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

■ a. By adding under Pakistan, in alphabetical order, two Pakistani entities; and

■ b. By revising under the United Arab Emirates, the Emirati entity, Infotec, a.k.a., Info Tech, Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.

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
*	* * *	*	*	*
PAKISTAN				
*	* * *	*	*	*
	Azam Electronics, a.k.a., the following two aliases: —Mohammad Azam Electronics, *and* —Akram Dish TV Satellite Center, Chaman, Killa, Abdullah District, Baluchistan Province, Pakistan	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial.	77 FR [INSERT FR PAGE NUMBER] 11/30/12.
*	* * *	*	*	*
	Mohammad Azam, a.k.a, —Mohammad Akram, Chaman, Killa, Abdullah District, Baluchistan Province, Pakistan	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial.	77 FR [INSERT FR PAGE NUMBER] 11/30/12.
*	* * *	*	*	*
UNITED ARAB EMIRATES				
*	* * *	*	*	*
	Infotec, a.k.a., the following two aliases: —Info Tech, *and* —I. Tec Trading FZE, P.O. Box 10559, Ras Al Khaimah, U.A.E.; *and* Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial.	76 FR 78146, 12/16/11. 77 FR [INSERT FR PAGE NUMBER] 11/30/12.
*	* * *	*	*	*

Dated: November 26, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–28919 Filed 11–28–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5397–N–05]

RIN 2502–ZA05

Federal Housing Administration (FHA): Temporary Waiver of FHA's Regulation on Property Flipping; Extension of Waiver

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of waiver extension.

SUMMARY: This notice of waiver extension announces that FHA is extending the availability of the temporary waiver of its regulation that prohibits the use of FHA financing to purchase single family properties that are being resold within 90 days of the previous acquisition, until December 31, 2014. This waiver, which was first issued in January 2010, took effect for all sales contracts executed on or after February 1, 2010. On January 28, 2011, FHA extended the waiver through calendar 2011. On December 28, 2011, FHA extended the waiver through calendar 2012. Prior to the waiver, a mortgage was not eligible for FHA insurance if the contract of sale for the purchase of the property that secured the mortgage was executed within 90 days of the prior acquisition by the seller, and the seller did not come under any of the exemptions to this 90-day period specified in the regulation.

Through the regulatory waiver, FHA encourages investors that specialize in acquiring and renovating properties to renovate foreclosed and abandoned homes, with the objective of increasing the availability of affordable homes for first-time and other purchasers, helping to stabilize real estate prices as well as neighborhoods and communities where foreclosure activity has been high. The waiver is applicable to all single family properties being resold within the 90-day period after prior acquisition, and is not limited to foreclosed properties. Additionally, the waiver is subject to certain conditions, and mortgages must meet these conditions to be eligible for the waiver. The waiver is not applicable to mortgages insured under HUD's Home Equity Conversion Mortgage (HECM) Program.

DATES: *Effective Date:* January 1, 2013 through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Karin B. Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 203.37a(b)(2) of HUD's regulations (24 CFR 203.37a(b)(2)) establishes FHA's rule on recent resales

of single family properties; this regulatory section provides that FHA will not insure a mortgage for a single family property if the contract of sale is executed within 90 days of the acquisition of the property by the seller. The acquisition date is the date that seller has the power, under the law of the state in which the property is located, to transfer title to a buyer. Section 203.37a(c) lists the sales transactions that are exempt from this rule. The exempt transactions include sales by HUD of real estate-owned (REO) properties under HUD's regulations in 24 CFR part 291, sales by other federal agencies of REO properties, sales of properties by nonprofit organizations that have been approved to purchase and resell HUD REO properties, and sales by state- and federally-charted financial institutions and government sponsored enterprises (GSEs).

''Property flipping'' refers to the practice in which a property recently acquired is resold for a considerable profit with an artificially inflated value, often as the result of a lender's collusion with an appraiser. Most property flipping occurs within a matter of days after acquisition, and usually with only minor cosmetic improvements, if any, to the property. In an effort to preclude this predatory lending practice with respect to mortgages insured by FHA, HUD issued a final rule on May 1, 2003 (68 FR 23370) that provides in 24 CFR 203.37a that FHA will not insure a mortgage if the contract of sale for the purchase of the property that secures the mortgage is executed within 90 days of the prior acquisition by the seller, and the seller does not come under any of the exemptions to this 90-day period specified in § 203.37a(c).

In a final rule published on June 7, 2006 (71 FR 33138), HUD expanded the exemptions to the 90-day time restrictions contained in § 203.37a(c) to include transactions such as sales of single family properties by GSEs, state- and federally-chartered financial institutions, nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions, local and state governments and their instrumentalities, and, upon announcement by HUD through issuance of a notice, sales of properties in areas designated by the President as federal disaster areas.

The downturn in the housing market over the past several years led to a rapid rise of homeowners defaulting on mortgages, and consequently an increase in vacant foreclosed homes. Federal, state, and local governments initiated a variety of measures to avoid foreclosures. Although these efforts to keep families in their homes have helped to improve the condition of the housing market, the foreclosure rate remains unacceptably high. Not only do foreclosures affect the families that lost their homes, but they affect neighborhoods and communities. While HUD continues its efforts to help homeowners remain in their homes, through the waiver of its regulation on property flipping, HUD seeks to help stabilize neighborhoods and communities.

HUD first granted temporary waiver of its regulation on anti-property flipping through notice published in the **Federal Register** on May 21, 2010, at 75 FR 28633. The May 2010 notice waived HUD's regulations through December 31, 2011. Through notice of waiver extension published in the **Federal Register** on December 28, 2011, at 76 FR 81363, HUD extended the waiver through December 31, 2012. Through this notice of waiver extension published in today's edition of the **Federal Register**, HUD announces the extension of the waiver through December 31, 2014. HUD is cognizant of concerns expressed by industry, state and local jurisdictions, and other interested parties that they receive sufficient advance notice by HUD of any planned extension of the waiver, which they advise was not the case in the extension of waiver through the end of calendar year 2012. For this reason, HUD is providing notice of the extension of the waiver through December 31, 2014, well in advance of December 31, 2012.

Since the waiver was made available, HUD believes that it has made a significant contribution to neighborhood stabilization. While the waiver remains available for the purpose of stimulating rehabilitation of foreclosed and abandoned homes for two more calendar years, the waiver continues to remain applicable to all properties being resold within the 90-day period after prior acquisition. The waiver is not limited to the resale of foreclosed properties.

II. Eligibility for Waiver of 24 CFR 203.37a(b)(2)

To be eligible for the waiver of the Property Flipping Rule, an FHA-approved mortgagee must ensure that the mortgage meets the following conditions:

1. All transactions must be arms-length, with no identity of interest between the buyer and seller or other parties participating in the sales transaction. Some ways that the lender may ensure that there is no inappropriate collusion or agreement between parties, are to assess and determine the following:

a. The seller holds title to the property;

b. Limited liability companies, corporations, or trusts that are serving as sellers were established and are operated in accordance with applicable state and federal law;

c. No pattern of previous flipping activity exists for the subject property as evidenced by multiple title transfers within a 12 month time frame (chain of title information for the subject property can be found in the appraisal report);

d. The property was marketed openly and fairly, through a multiple listing service (MLS), auction, for sale by owner offering, or developer marketing (any sales contracts that refer to an ''assignment of contract of sale,'' which represents a special arrangement between seller and buyer may be a red flag).

2. In cases in which the sales price of the property is greater than 20 percent above the seller's acquisition cost, the mortgage is eligible for the waiver only if the mortgagee:

a. Justifies the increase in value by retaining in the loan file a second appraisal and/or supporting documentation, which verifies that the seller has completed sufficient legitimate renovation, repair, and rehabilitation work on the subject property to substantiate the increase in value or, in cases where no such work is performed, the appraiser provides appropriate explanation of the increase in property value since the prior title transfer; and

b. Orders a property inspection and provides the inspection report to the purchaser before closing. The mortgagee may charge the borrower for this inspection. The use of FHA-approved inspectors or 203(k) consultants is not required. The inspector must have no interest in the property or relationship with the seller, and must not receive compensation for the inspection for any party other than the mortgagee. Additionally, the inspector may not: Compensate anyone for the referral of the inspection; receive any compensation for referring or recommending contractors to perform any repairs recommended by the inspection; or be involved with performing any repairs recommended by the inspection. At a minimum, the inspection must include:

i. The property structure, including the foundation, floor, ceiling, walls and roof;

ii. The exterior, including siding, doors, windows, appurtenant structures

such as decks and balconies, walkways and driveways;

iii. The roofing, plumbing systems, electrical systems, heating and air conditioning systems;

iv. All interiors; and

v. All insulation and ventilation systems, as well as fireplaces and solid fuel-burning appliances.

3. Only forward mortgages are eligible for the waiver. Mortgages insured under HUD's HECM program are ineligible for the waiver.

III. Guidance on the Conditions for Waiver Eligibility

A. Seller's Acquisition Cost

The seller's acquisition cost is the purchase price which the seller paid for the property, and the following costs (if paid by the seller):

- Closing costs, plus
- Prepaid costs, including commissions.

The seller's acquisition cost does not include the cost of repairs that the seller makes to the property.

B. Justification and Documentation of Increase in Value

If the resale price of the property is greater than 20 percent above the seller's acquisition cost, the mortgage will be eligible for FHA insurance only if the mortgagee justifies the increase in value. The mortgagee must verify that the seller has completed sufficient legitimate renovation, repair, or rehabilitation work on the subject property to substantiate the increase in value by retaining supporting documentation in the loan file or by providing a second appraisal.

- If the mortgagee uses a second appraisal:
  - An FHA roster appraiser must perform the appraisal in compliance with all FHA appraisal reporting requirements.
  - The mortgagee may not use an appraisal done for a conventional loan even if it was completed by an FHA roster appraiser.
  - The mortgagee may not charge the cost of the second appraisal to the homebuyer.

If the mortgagee has ordered a second appraisal to document the increase in value, the mortgagee must not use this appraisal for case processing and must not enter it into FHA Connection.

C. Property Inspection Report

If the resale price of the property is greater than 20 percent above the seller's acquisition cost, the mortgage will be eligible for FHA insurance only if the mortgagee obtains a property inspection and provides the inspection report to the buyer before closing. The borrower, lender, or mortgage broker (if one is involved in the transaction) may order the property inspection. The lender or mortgage broker may charge the borrower for this inspection.

D. Repairs

If the inspection report notes that repairs are required because of structural or ''health and safety'' issues, those repairs must be completed prior to closing. After completion of repairs to address structural or ''health and safety'' issues, the inspector must conduct a final inspection to determine if the repairs have been completed satisfactorily and eliminated the structural or ''health and safety'' issues. The borrower, lender, or mortgage broker may order the final inspection.

IV. Compliance With the Paperwork Reduction Act

The information collection requirements applicable to this waiver have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control No. 2502–0059. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

VI. Period of Waiver Eligibility

The waiver that is the subject of this notice remains effective beyond December 31, 2012, through December 31, 2014, for all sales contracts executed on or after February 1, 2010, the availability date provided by the issuance of the waiver in January 2010, unless extended or withdrawn by HUD.

By notice, HUD shall notify the public of any extension or withdrawal of this waiver. If as a result of this waiver, there is a significant increase in defaults on FHA-insured mortgages and an increase in mortgage insurance claims that are attributable to mortgages insured as a result of exercise of this waiver authority, HUD may withdraw this waiver immediately.

Dated: November 26, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–28918 Filed 11–28–12; 8:45 am]

BILLING CODE 4210–67–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2012–4]

Electronic Filing in the Copyright Office of Notices of Intention To Obtain a Section 115 Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is amending its regulations for filing Notices of Intention to obtain a Section 115 compulsory license with the Copyright Office to provide an option for electronically filing notices. By law, such notices may be filed in the Office only when the public records of the Copyright Office do not identify the copyright owner of the musical work and include an address at which notice can be served. In addition, the Copyright Office is amending its regulations to clarify the rules for filing physical Notices of Intention, to clarify that it does not examine Notices of Intention filed with the Office for legal sufficiency, and to include a Privacy Act Advisory Statement.

DATES: Effective January 14, 2013.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. All prior **Federal Register** notices and comments in this docket are available at: *http://www.copyright.gov/laws/rulemaking.html.*

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act provides that ''[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person * * * may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work.'' 17 U.S.C. 115(a)(1).

Included among the conditions that must be met to use the Section 115 compulsory license is the requirement that a person who wishes to obtain a compulsory license ''shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the

registration or other public records of the Copyright Office (''Copyright Office'' or ''Office'') do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.'' 17 U.S.C. 115(b)(1).

In 2004, the Copyright Office amended 37 CFR 201.18, the regulations governing Notices of Intention to obtain a Section 115 compulsory license (''Notices''), in order to make the license more functional. 69 FR 34578 (June 22, 2004). Among the 2004 amendments to 37 CFR 201.18 was a provision that allowed that a Notice ''may designate any number of nondramatic musical works, provided that the copyright owner of each designated work or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary [*i.e.,* name and contact information of licensee; name and contact information of primary entity making and distributing phonorecords, and information concerning yearly accounting periods]. For purposes of this section, a Notice which lists multiple works shall be considered a composite filing of multiple Notices and fees shall be paid accordingly if filed in the Copyright Office under paragraph (f) of this section (*i.e.,* a separate fee, in the amount set forth in § 201.3(e)(1), shall be paid for each work listed in the Notice).'' 37 CFR 201.18(a)(4). The 2004 amendments also allowed licensees to serve Notices directly on copyright owners or designated agents by means of an electronic transmission when the copyright owner or designated agent has a written public policy that it can accommodate such submissions. 37 CFR 201.18(a)(7).

Earlier in the 2004 rulemaking process the Office also considered whether to allow a licensee to file a Notice in the Office in an electronic format. The Office determined that it was not prepared to accept electronically filed Notices because it did not have in place the systems that would accommodate such filings. However, the Office anticipated that such filings would be accepted in the future. The Office did provide that in the case where the licensee intends to license a high volume of nondramatic musical works under Section 115 and would endure significant hardships if required to submit the Notices under the standard practices, the licensee may contact the Licensing Division of the Copyright Office to inquire whether special arrangements could be made for submission of the Notice electronically. 69 FR 11566, 11570 (March 11, 2004).

The Office is aware of a growing need for an electronic filing system for filing Section 115 Notices with the Copyright Office because of the large number of works being used under the compulsory license where service of the Notice cannot be made effectively on the copyright owner. To meet this need, the Office is now preparing to accept specific types of electronically filed Notices addressing multiple nondramatic musical works. Hence, the Office is amending its regulations in § 201.18 by providing for use of an online system for submission of Notices covering multiple nondramatic musical works.

In its Notice of Proposed Rulemaking published in May 2012, the Copyright Office proposed a number of changes to the regulations governing the filing of Section 115 Notices. 77 FR 31237 (May 25, 2012). First, the Office proposed to clarify its rules for submission of Notices in paper form that contain multiple titles of nondramatic musical works. The proposal noted that, while in practice the Office does accept and process Notices with multiple titles in the case where no copyright owner of any of the works can be identified, the regulations do not specifically contemplate this situation. Thus, the Office proposed to amend its regulations to clarify that a Notice filed in a paper format may list multiple works in a single Notice when any of the following circumstances apply: In the case where no copyright owner can be identified from the Copyright Office records for any of the works listed in the Notice; in the case where the copyright owner of each work listed in the Notice is the same and the records of the Copyright Office do not include an address at which notice can be served; or for works having more than one copyright owner, in the case where the works listed in the Notice share a common copyright owner and the records of the Copyright Office do not include an address at which notice can be served on any of the copyright owners for the subject works. The Office proposed to maintain these distinctions for the paper filings at this time because they provide more concise information to the public reviewing the Notices and facilitates the recordkeeping process for the Office.

The Office also proposed to amend the regulations so that Notices addressing multiple nondramatic musical works may be submitted electronically as XML files, regardless of whether the copyright owner of each designated work is the same, provided that the Notice does not include a nondramatic musical work when the identity and address of at least one of its copyright owners may be found in the public record of the Copyright Office. Fees for such electronic Notices, the Office proposed, would have to be paid through a Copyright Office deposit account (pursuant to § 201.6(b) of the Copyright Office regulations), at least during the introductory period of the online filing process. Use of a deposit account will allow the Office to make any necessary fee payments immediately and it avoids the need to solve the technological and security issues associated with providing a credit card payment in this first iteration of the system.

Further to the question of the processing of electronic Section 115 Notices, the Copyright Office proposed not to require an electronic signature during the initial rollout of the filing process, though it did note plans to add an electronic signature requirement in later versions of the system. Under the initial rollout, because the fee for Notice must be paid through a deposit account, the online system will be able to use the deposit account information to reasonably verify and authenticate the identity of the person submitting and validating Notices.

The Copyright Office, in its May 25, 2012 notice of proposed rulemaking also proposed two additional amendments. The first of these would clarify that the Office does not examine Notices for legal sufficiency, would encourage filers to take care to comply with all the statutory and regulatory requirements pertaining to such Notices, and would note that the Office will notify a prospective licensee when a Notice is not accompanied by payment of the required fee. The second additional amendment would add a Privacy Act Advisory Statement in § 201.18, which would fulfill the Office's obligation to notify the public that Notices with personally identifying information filed with the Office become public records.

Comments

The Office received two comments in response to its notice of proposed rulemaking. One, from Attorney Chris Garvey, supported the proposal to permit the electronic submission of section 115 Notices. The other, from Public Knowledge (''PK''), also supported the electronic filing proposal, along with making further suggestions. PK proposed that electronically filed

Notices should be permitted for single nondramatic musical works, and that the Office should ''hasten to build the capacity to authenticate licensees and receive payment information without deposit accounts.'' This latter measure, PK maintained, would result in long-term reduced transaction costs. PK also suggested that the Office ''implement a searchable, electronic Notice database for public use'' in order to minimize transaction costs between copyright owners and licensees, and avoid the hourly fee that the Copyright Office charges for searches of non-public-facing records.

Discussion

The Office is in agreement with PK in its goal of further improving the functionality of the Office's electronic system ''to simplify the Section 115 process for licensees, copyright owners, and the Office itself.'' The Office believes that the amendments detailed above are an interim step towardsmeeting this goal. The Office also notes that of the three PK proposals, one is already encompassed in the amendments and the other two will be instituted as part of the upgrades to the Office's technical infrastructure.

Regarding the ability of a person to electronically file a Notice for a single nondramatic musical work, the text of the amendments to § 201.18(a)(4) states that such a Notice ''may designate multiple nondramatic musical works.'' The use of the word ''may'' indicates that multiple works need not be designated, and that an electronic Notice may be filed for a single work as well. However, a person who files an electronic Section 115 Notice during this initial rollout phase must be enrolled in the Office's deposit account program. In order to accommodate a filer of a Notice identifying only one or a few titles who does not have a deposit account, the Office intends in the future to upgrade the online filing system to require an electronic signature and to accept additional payment options such as credit card payments. At the moment, however, the focus is on offering a mechanism for filing Notices with large numbers of titles in a manner that can easily be administered by the Office at this time.

Regarding PK's desire for a public database of Section 115 Notices, the Office acknowledges that while the search capability of the electronically filed Notices will not be directly available to the public for technical reasons, this will only be the case during the initial rollout of the service, and that future upgrades to the system will include a searchable database.

This Final Rule makes one change to the proposed amendments not suggested by the commenters. In new § 201.18(a)(4)(iii), the phrase ''in electronic format'' in the first sentence is replaced with ''through its electronic filing system.'' This change merely clarifies the subject of the subsection.

Pilot Program

While the Office is amending its regulations to accept electronic filing of the Section 115 Notices of Intent to Obtain a Compulsory License, it needs to fully test the system before making it available to the public for actual, valid submissions of Notices. Thus, members of the public are invited to participate in a Beta test of the proposed electronic system. Parties wishing to participate in Beta testing should contact Tracie Coleman in the Licensing Division of the Copyright Office at 202–707–3600, *tmau@loc.gov.* The Beta testing will require participants to upload ''test'' Notices to the Beta version of the electronic system to ensure proper functionality. ''Test'' Notices uploaded during the Beta testing phase will not require the submission of a filing fee, and they will not have any legal effect or otherwise be considered valid for licensing purposes. The Beta testing will be limited to selected participants until system testing is complete. Testing is expected to be completed by the time the rule becomes effective.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

In consideration of the foregoing, the Copyright Office amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.4(a)(1)(iii) by removing ''Original, signed notices'' at the beginning of the paragraph and adding ''Notices'' in its place.

■ 3. Amend § 201.18 as follows:

■ a. By revising paragraph (a)(4);

■ b. By adding paragraph (e)(5);

■ c. By redesignating paragraph (g) paragraph (h);

■ d. By adding a new paragraph (g); and

■ e. By adding paragraph (i).

The additions and revisions read as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(4) A Notice of Intention shall be served or filed for nondramatic musical works embodied, or intended to be embodied, in phonorecords made under the compulsory license. For purposes of this section and subject to subparagraphs (ii) and (iii), a Notice filed with the Copyright Office which lists multiple works shall be considered a single Notice and fees shall be paid in accordance with the fee schedule set forth in § 201.3(e)(1) if filed in the Copyright Office under paragraph (f)(3) of this section. Payment of the applicable fees for a Notice submitted electronically under this paragraph shall be made through a deposit account established under § 201.6(b).

(i) Except as provided for in paragraph (a)(7), a Notice of Intention served on a copyright owner or agent of a copyright owner may designate any number of nondramatic musical works provided that that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary and that the copyright owner of each designated work is the same, or in the case of any work having more than one copyright owner, that any one of the copyright owners is the same and is the copyright owner served.

(ii) A Notice of Intention filed in the Copyright Office in paper form may designate any number of nondramatic musical works provided that that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary, and that the copyright owner of each designated work (or, in the case of works having more than one copyright owner, any one of the copyright owners) is the same and the registration records or other public records of the Copyright Office do not identify the copyright owner(s) of such work(s) and include an address for any such owner(s) at which notice can be served. For purposes of this subparagraph, in the case of works having more than one copyright owner, a single Notice must identify an actual person or entity as the common copyright owner; the common copyright owner may not be identified as ''unknown.'' However, a single Notice may include multiple works for which no copyright owners can be identified for any of the listed works.

(iii) A Notice of Intention filed in the Copyright Office through its electronic filing system may designate multiple nondramatic musical works, regardless of whether the copyright owner of each designated work (or, in the case of any work having more than one copyright owner, any one of the copyright owners) is the same, provided that the information required under paragraphs

(d)(1)(i) through (iv) of this section does not vary, and that for any designated work, the records of the Copyright Office do not include an address at which notice can be served.

* * * * *

(e) * * *

(5) If the Notice is filed in the Office electronically, the person or entity intending to obtain the compulsory license or a duly authorized agent of such person or entity shall, rather than signing the Notice, attest that he or she has the appropriate authority of the licensee, including any related entities listed, if applicable, to submit the electronically filed Notice on behalf of the licensee.

* * * * *

(g) *Filing date and legal sufficiency of Notices.* The Copyright Office will notify a prospective licensee when a Notice was not accompanied by payment of the required fee. Notices shall be deemed filed as of the date the Office receives both the Notice and the fee, if applicable. If the prospective licensee fails to remit the required fee, the Notice will be deemed not to have been filed with the Office. However, the Copyright Office does not review Notices for legal sufficiency or interpret the content of any Notice filed with the Copyright Office under this section. Furthermore, the Copyright Office does not screen Notices for errors or discrepancies and it does not generally correspond with a prospective licensee about the sufficiency of a Notice. If any issue (other than an issue related to fees) arises as to whether a Notice filed in the Copyright Office is sufficient as a matter of law under this section, that issue shall be determined not by the Copyright Office, but shall be subject to a determination of legal sufficiency by a court of competent jurisdiction. Prospective licensees are therefore cautioned to review and scrutinize Notices to assure their legal sufficiency before filing them in the Copyright Office.

* * * * *

(i) *Privacy Act Advisory Statement.* The authority for receiving the personally identifying information included within a Notice of Intention to obtain a compulsory license is found in 17 U.S.C. 115 and § 201.18. Personally identifying information is any personal information that can be used to identify or trace an individual, such as name, address or telephone numbers. Furnishing the information set forth in § 201.18 is voluntary. However, if the information is not furnished, it may affect the sufficiency of Notice of Intention to obtain a compulsory license and may not entitle the prospective licensee to the benefits available under 17 U.S.C. 115. The principal uses of the requested information are the establishment and maintenance of a public record of the Notices of Intention to obtain a compulsory license received in the Licensing Division of the Copyright Office. Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright records including online catalogs, and preparation of search reports upon request.

Dated: September 21, 2012.

Maria A. Pallante,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 2012–28906 Filed 11–28–12; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 381

[Docket No. 2011–2 CRB NCEB II]

Determination of Reasonable Rates and Terms for Noncommercial Broadcasting

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the rates and terms for use of certain works in connection with noncommercial broadcasting for the period commencing January 1, 2013, and ending on December 31, 2017.

DATES: *Effective Date:* January 1, 2013.

Applicability Dates: The regulations apply to the license period January 1, 2013, through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (''Judges'') to conduct proceedings every five years, beginning in 2006, to determine the rates and terms for the section 118 license. 17 U.S.C. 804(b)(6). Accordingly, the Judges conducted a proceeding to determine the rates and terms for the license period 2008–2012 and published final regulations on November 30, 2007. 72 FR 67646.

On January 5, 2011, the Judges published in the **Federal Register** a notice commencing the proceeding to determine the rates and terms for the 2013–2017 license period and requesting submission of petitions to participate from interested parties. 76 FR 591. Petitions to Participate were received from: The American Society of Authors, Composers and Publishers (''ASCAP''); SESAC, Inc.; Broadcast Music, Inc. (''BMI''); Educational Media Foundation (''EMF''); Music Reports, Inc. (''MRI''); National Public Radio, the Public Broadcasting Service, and noncommercial radio and television stations eligible to receive funding from the Corporation for Public Broadcasting jointly (''NPR/PBS/CPB''); National Religious Broadcasters Noncommercial Music License Committee (''NRBNMLC''); the Church Music Publishers' Association; the National Music Publishers' Association, Inc. and the Harry Fox Agency, jointly (''NMPA/HFA''); the Catholic Radio Association (''CRA''); and the American Council on Education (''ACE''). The Judges set the timetable for the three-month negotiation period, see 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than October 30, 2011. The Judges received written direct statements from CRA, BMI, ASCAP, and MRI,[1] as well as several notifications of settlement and proposed rates and terms for the Judges to adopt.

There are two ways that copyright owners and public broadcasting entities [2] may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements ''shall be given effect in lieu of any determination by the * * * Copyright Royalty Judges,'' provided that copies of the agreement are submitted to the Judges ''within 30 days of execution.'' 17 U.S.C. 118(b)(2). The Judges received several agreements

[1] Pursuant to 17 U.S.C. 803(b)(6)(C)(x), the Judges set the 60-day discovery period to run from November 30, 2011, through January 30, 2012. During the discovery period, MRI and CRA each withdrew from the proceeding on December 13, 2011, and January 27, 2012, respectively.

[2] A ''public broadcasting entity'' is defined as a ''noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)'' of section 118. 17 U.S.C. 118(f).

in this category; no further action is required with respect to these agreements.

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities and submit them to the Judges for approval. Section 801(b)(7)(A) provides that in such event:

> (i) The Copyright Royalty Judges shall provide those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms and rates.

17 U.S.C. 801(b)(7)(A). The Judges received seven such proposals and published a notice requesting comment on the proposed rates and terms contained in the proposals, with certain modifications, submitted by the following participants: (1) SESAC and ACE; (2) BMI and ACE; (3) ASCAP and ACE; (4) NMPA/HFA and NRBNMLC; (5) SESAC and NRBNMLC; (6) ASCAP and NRBNMLC; and (7) BMI and NRBNMLC.[3] 77 FR 24662 (April 25, 2012). Comments were due by May 25, 2012.

The Judges received comments from Common Frequency; OpenSky Radio Corp.; The Prometheus Radio Project; Wimberley Valley Radio; WKNC–FM; and PBS and NPR, jointly. Each comment, except the PBS/NPR comment,[4] opposed certain of the proposed rates as not reasonable as applied to them.[5] The Judges' ability to reject an agreement on the reasonableness of the rates and terms proposed therein is constrained by statute. Specifically, section 801(b)(7)(A)(ii) precludes the Judges from declining to adopt proposed rates and terms on the grounds of reasonableness unless a participant to the proceeding objects. None of the entities objecting to the proposed rates and terms submitted a timely filed petition to participate in this proceeding, and therefore none qualifies as a participant to the proceeding. Therefore, having received no objections to the reasonableness of the proposed rates and terms from a *participant to this proceeding,* the Copyright Royalty Judges are adopting final regulations, as published on April 25, 2012, and June 26, 2012, which set the rates and terms for the section 118 statutory license for the period 2013–2017.[6]

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend Part 381 to Chapter III of title 37 of the Code of Federal Regulations as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 381.1 [Amended]

■ 2. Section 381.1 is amended by removing ''2008'' and adding ''2013'' in its place and by removing ''2012'' and adding ''2017'' in its place.

■ 3. Section 381.4 is amended as follows:

■ a. By revising paragraphs (a)(1) through(8); and

■ b. In paragraph (c), by removing ''2008'' and adding ''2013'' in its place, and by removing ''2012'' and adding ''2017'' in its place.

The revisions read as follows:

§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

* * * * *

(a) *Determination of royalty rate.*

(1) For performance of such work in a feature presentation of PBS: 2013–2017	$232.18
(2) For performance of such a work as background or theme music in a PBS program: 2013–2017	$58.51
(3) For performance of such a work in a feature presentation of a station of PBS: 2013–2017	$19.84
(4) For performance of such a work as background or theme music in a program of a station of PBS: 2013–2017	$4.18
(5) For the performance of such a work in a feature presentation of NPR: 2013–2017	$23.53
(6) For the performance of such a work as background or theme music in an NPR program: 2013–2017	$5.70
(7) For the performance of such a work in a feature presentation of a station of NPR: 2013–2017	$1.66
(8) For the performance of such a work as background or theme music in a program of a station of NPR: 2013–2017	$.59

■ 4. Section 381.5 is amended by revising paragraphs (c) and (d) to read as follows:

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i)

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[3] On October 31, 2011, EMF notified the Judges that as a member of NRBNMLC it was a party to each of the joint proposals involving NRBNMLC.

[4] The PBS/NPR comment opposed the Judges' proposal to remove and reserve two sections—specifically § 381.4 and § 381.8, which govern performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities of 17 U.S.C. 118(c), and the use of published pictorial, graphic and sculptural works in PBS-distributed programs as well as in other PBS-distributed programs, respectively—and proposed rates and terms for these sections for the 2013–2017 license period. The Judges proposed removal of these sections because none of the initial joint proposals addressed them. In accordance with 17 U.S.C. 801(b)(7)(A), the Judges sought comment on this proposal in a subsequent notice. 77 FR 38022 (June 26, 2012). Comments were due July 26, 2012; none were received.

[5] After the comment period, BMI and ASCAP submitted a letter to ''clarify'' portions of the joint proposals addressed by the comments. See Letter from BMI and ASCAP, dated June 6, 2012. OpenSky Radio responded to the BMI/ASCAP letter on July 17, 2012. For the reasons set forth above, the Judges need not address these submissions.

[6] The regulations adopted today no longer require the Judges to publish a cost of living adjustment and a revised schedule of rates for the ASCAP and BMI repertories in § 381.5. See 37 CFR 381.5(c)(1)–(2). Such publication still is required for the SESAC repertory but not until on or before December 1, 2013. See 37 CFR 381.5(c)(3), 381.10(a).

	Number of full-time students	2013	2014	2015	2016	2017
Level 1	<1,000	$319	$325	$332	$339	$345
Level 2	1,000–4,999	369	376	384	392	399
Level 3	5,000–9,999	505	515	525	535	546
Level 4	10,000–19,999	655	668	681	695	708
Level 5	20,000 +	822	838	855	872	890

(ii) Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i)

	Number of full-time students	2013	2014	2015	2016	2017
Level 1	<1,000	$319	$325	$332	$339	$345
Level 2	1,000–4,999	369	376	384	392	399
Level 3	5,000–9,999	505	515	525	535	546
Level 4	10,000–19,999	655	668	681	695	708
Level 5	20,000 +	822	838	855	872	890

(ii) Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) 2013: $140.00 per station;

(ii) 2014: $140 per station, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(iii) 2015: The 2014 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(iv) 2016: The 2015 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section;

(v) 2017: The 2016 rate, subject to an annual cost of living adjustment in accordance with paragraph (c)(3)(vi) of this section.

(vi) Such cost of living adjustment to be made in accordance with the greater of

(A) The change, if any, in the Consumer Price Index (all consumers, all items) published by the U.S. Department of Labor, Bureau of Labor Statistics during the twelve (12) month period from the most recent Index, published before December 1 of the year immediately prior to the applicable year, or

(B) Two percent (2%).

(4) For the performance of any other such compositions: $1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment to ASCAP, BMI and SESAC shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC.

* * * * *

■ 5. Section 381.6 is amended as follows:

■ a. By removing paragraph (f).

■ b. By redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

■ c. By adding a new paragraph (b);

■ d. By revising newly redesignated paragraphs (d) and (e).

The additions and revisions to § 381.6 read as follows:

§ 381.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(b) *Definitions.* As used in paragraphs (d) and (e) of this section, the following terms and their variant forms mean the following:

(1) *Feature Music* shall mean any performance of a musical work, whether live or recorded, that is the principal focus of audience attention. Feature Music does not include bridge, background, or underscore music, themes or signatures, interstitial music between programs such as in public service announcements or program sponsorship identifications, brief musical transitions in and out of program segments (not to exceed 60 seconds in duration), incidental performances of music during broadcasts of public, religious, or sports events, or brief performances during news, talk, religious, and sports programming of no more than 30 seconds in duration.

(2) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator or Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(3) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(4) *Talk Format Station* shall mean a noncommercial radio station:

(i) Whose program content primarily consists of talk shows, news programs, sports, community affairs or religious sermons (or other non-music-oriented programming);

(ii) That performs Feature Music in less than 20% of its programming annually; and

(iii) That performs music-oriented programming for no more than four (4) programming hours during the hours from 6 a.m. to 10 p.m. each weekday, with no two (2) hours of such

programming occurring consecutively, with the exception of up to five (5) weekdays during the year.

(5) *Weekday* shall mean the 24-hour period starting at 12 a.m. through 11:59 p.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays occurring between January 1 of a given year up to and including Thanksgiving day of that year.

(6) *Translator Station* and *Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

* * * * *

(d) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	1,126	1,149	1,171	1,195	1,219
Level 3	500,000–999,999	1,688	1,722	1,756	1,791	1,827
Level 4	1,000,000–1,499,999	2,251	2,296	2,342	2,389	2,437
Level 5	1,500,000–1,999,999	2,814	2,870	2,928	2,986	3,046
Level 6	2,000,000–2,499,999	3,377	3,445	3,513	3,584	3,655
Level 7	2,500,000–2,999,999	3,939	4,018	4,098	4,180	4,264
Level 8	3,000,000 and above	5,628	5,741	5,855	5,972	6,092

(ii) Talk Format Station Fees (Stations with <20% Feature Music programming):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	631	644	657	670	683
Level 3	500,000–999,999	631	644	657	670	683
Level 4	1,000,000–1,499,999	788	804	820	836	853
Level 5	1,500,000–1,999,999	985	1,005	1,025	1,045	1,066
Level 6	2,000,000–2,499,999	1,182	1,206	1,230	1,254	1,279
Level 7	2,500,000–2,999,999	1,379	1,406	1,434	1,463	1,492
Level 8	3,000,000 and above	1,970	2,009	2,049	2,090	2,132

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) Music Fees (Stations with 20% or more programming containing Feature Music):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	1,126	1,149	1,171	1,195	1,219
Level 3	500,000–999,999	1,688	1,722	1,756	1,791	1,827
Level 4	1,000,000–1,499,999	2,251	2,296	2,342	2,389	2,437
Level 5	1,500,000–1,999,999	2,814	2,870	2,928	2,986	3,046
Level 6	2,000,000–2,499,999	3,377	3,445	3,513	3,584	3,655
Level 7	2,500,000–2,999,999	3,939	4,018	4,098	4,180	4,264
Level 8	3,000,000 and above	5,628	5,741	5,855	5,972	6,092

(ii) Talk Format Station Fees (Stations with <20% Feature Music programming):

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$631	$644	$657	$670	$683
Level 2	250,000–499,999	631	644	657	670	683
Level 3	500,000–999,999	631	644	657	670	683
Level 4	1,000,000–1,499,999	788	804	820	836	853
Level 5	1,500,000–1,999,999	985	1,005	1,025	1,045	1,066
Level 6	2,000,000–2,499,999	1,182	1,206	1,230	1,254	1,279
Level 7	2,500,000–2,999,999	1,379	1,406	1,434	1,463	1,492
Level 8	3,000,000 and above	1,970	2,009	2,049	2,090	2,132

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) Music fees for stations with >=20% Feature Music programming:

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$138	$140	$143	$146	$149
Level 2	250,000–499,999	230	234	239	244	248
Level 3	500,000–999,999	345	352	359	366	373
Level 4	1,000,000–1,499,999	459	468	478	487	497
Level 5	1,500,000–1,999,999	574	586	597	609	622
Level 6	2,000,000–2,499,999	689	702	716	731	745
Level 7	2,500,000–2,999,999	804	820	836	853	870
Level 8	3,000,000 and above	1,149	1,171	1,195	1,219	1,243

(ii) Talk fees for stations with <20% Feature Music programming:

	Population count	2013	2014	2015	2016	2017
Level 1	0–249,999	$138	$140	$143	$146	$149
Level 2	250,000–499,999	138	140	143	146	149
Level 3	500,000–999,999	138	140	143	146	149
Level 4	1,000,000–1,499,999	161	164	167	170	174
Level 5	1,500,000–1,999,999	201	205	209	213	218
Level 6	2,000,000–2,499,999	241	246	251	256	261
Level 7	2,500,000–2,999,999	281	287	293	299	305
Level 8	3,000,000 and above	402	410	418	427	435

(4) For the performance of any other such compositions, in 2013 through 2017, $1.

(e) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI and SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection. In the event that a public broadcasting entity wishes to be deemed a Talk Format Station, then such entity shall provide a signed declaration stating that Feature Music is performed in less than 20% of its annual programming and that it complies with the caps set forth in paragraph (b)(4) of this section. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its program schedule or other documentation supporting its eligibility as a Talk Format Station available for inspection.

* * * * *

■ 6. Section 381.7 is amended as follows:

■ a. By revising paragraphs (b)(1)(i)(A) through (D) and (b)(1)(ii)(A) through (D);

■ b. By revising paragraphs (b)(2)(i) through (iv);

■ c. In paragraph (b)(4), by removing ''2008–2012'' and adding ''2013–2017'' in its place; and

■ d. In paragraph (b)(5), by removing ''2012'' and adding ''2017'' in its place.

The revisions read as follows:

§ 381.7 Recording rights, rates and terms.

* * * * *

(b) * * *

(1)(i) * * *

	2013–2017
(A) Feature	$116.37
(B) Concert feature (per minute)	34.95
(C) Background	58.81
(D) Theme:	
(*1*) Single program or first series program	58.81
(*2*) Other series program	23.88

(ii) * * *

	2013–2017
(A) Feature	$ 9.62
(B) Concert feature (per minute)	2.53
(C) Background	4.18
(D) Theme:	
(*1*) Single program or first series of program	4.18
(*2*) Other series program	1.66

* * * * *

(2) * * *

	2013–2017
(i) Feature	$ 12.60
(ii) Concert feature (per minute)	18.49
(iii) Background	6.31
(iv) Theme:	
(A) Single program or first series program	6.31
(B) Other series program	2.52

* * * * *

■ 7. Section 381.8 is amended as follows:

■ a. By revising paragraphs (b)(1)(i) through (ii); and

■ b. In paragraph (f), by removing ''2012'' and adding ''2017'' in its place.

The revisions read as follows:

§ 381.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) * * *

(1)* * * (i) For such uses in a PBS-distributed program:

	2013–2017
(A) For featured display of a work	$70.75
(B) For background and montage display	34.50
(C) For use of a work for program identification or for thematic use	139.46

	2013–2017
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	45.82

(ii) For such uses in other than PBS-distributed programs:

	2013–2017
(A) For featured display of a work	$45.82
(B) For background and montage display	23.48
(C) For use of a work for program identification or for thematic use	93.65
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	23.49

* * * * *

■ 8. Section 381.10 is amended as follows:

■ a. In paragraph (a), by removing ''2007'' and adding ''2013'' in its place in each place it appears and by removing ''2006'' and adding ''2012'' in its place, and by removing ''On each December 1'' and adding ''On or before each December 1'' in its place;

■ b. By revising paragraph (b);

■ c. In paragraph (c), by adding ''the'' before ''rates'', by removing ''381.5'' and adding ''381.5(c)(3)'' in its place, and by adding ''(30)'' after ''thirty''.

The revisions read as follows:

§ 381.10 Cost of living adjustment.

* * * * *

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the **Federal Register** a revised schedule of the rates for § 381.5(c)(3), the rate to be charged for compositions in the repertory of SESAC, which shall adjust the royalty amounts established in a dollar amount according to the greater of

(1) The change in the cost of living determined as provided in paragraph (a) of this section, or

(2) Two percent (2%).

(3) Such royalty rates shall be fixed at the nearest dollar.

* * * * *

Dated: November 21, 2012.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2012–28785 Filed 11–28–12; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0267; FRL–9730–3]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the SJVUAPCD portion of the California State Implementation Plan (SIP). This rule was proposed in the **Federal Register** on April 30, 2012 and concerns volatile organic compound (VOC) emissions from wine storage tanks. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on December 31, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0267 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (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: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

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

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I. Proposed Action

On April 30, 2012 (77 FR 25384), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4694	Wine Fermentation and Storage Tanks.	12/15/05	11/18/11 (amended submittal as adopted 08/18/11).

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. We received comments from the following parties.

1. Dan Belliveau, NohBell Corporation; letter dated and received May 30, 2012.

2. Steven Colome, EcoPAS; email dated and received May 31, 2012. While these comments were received after the public comment period, EPA elected to add these comments to the docket and respond to the issues raised.

The comments and our responses are summarized below.

a. *Comment:* The commenters generally described their respective technologies and results to date to capture and control VOC emissions from the wine fermentation process. Both commenters stated that they believe their technologies represent reasonably available control technology (RACT) and believed this information should be considered in EPA's determination on RACT.

Response: EPA defines 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.'' 44 FR 53761 (September 17, 1979). EPA generally considers controls that are commonly used by a significant number of sources to be reasonably available and technologically and economically feasible. RACT differs from requirements for the more stringent lowest achievable emission rate (LAER) controls required for new and modified major sources in nonattainment areas. LAER is defined in CAA Section 171(3) and 40 CFR 51.165(a)(1)(xiii) as ''the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrate that such limitations are not achievable; or * * * the most stringent emissions limit which is achieved in practice by such class or category of stationary sources.''

Information provided by the commenters would help demonstrate that these two new and emerging technologies are technically feasible on wine tanks of a certain size. However, in order to meet EPA's criteria for RACT, the use of these technologies must be demonstrated in practice by a larger number of sources and at a broader range of tank capacities. In addition, we note that the commenters' current [1] cost effectiveness estimates are higher than what is generally accepted for VOC RACT level controls. Therefore, while these new and emerging technologies have not been demonstrated to represent RACT at this time, they should be considered for sources where LAER is required by new source review regulations.

In addition, what constitutes RACT can change over time as technologies once considered beyond RACT become more economically feasible and demonstrated in practice more widely. As a result, SJVUAPCD should reevaluate these technologies when subsequent RACT demonstrations are required, such as in 2014, when SJVUAPCD may need to submit a RACT SIP analysis for the 2008 8-hour ozone standard.

We also note that new and modified major sources in SJVUAPCD must demonstrate LAER in the permitting context, which California calls best available control technology (BACT). The initial steps in a BACT analysis are to identify all available technologies and eliminate those that are not technically feasible. Therefore, SJVUAPCD must consider these new technologies in all future required California BACT determinations for permitting wine fermentation tanks. EPA forwarded these comment letters to SJVUAPCD for consideration in their future BACT analyses.

b. *Comment:* EcoPAS stated that EPA's final approval of this version of Rule 4694 would remove the fermentation emission provisions of Rule 4694 from the SIP.

Response: Currently, there is no version of Rule 4694 approved in the SIP. Therefore, EPA approval of the amended submittal of Rule 4694 would not remove any provisions from the SIP.

We believe the commenter is specifically concerned with SJVUAPCD's deletion of the fermentation provisions (e.g., sections 5.1, 6.1, 6.2, 6.3, 6.5, 6.6, 7.0, and other supporting sections) in its amended submittal of Rule 4694. In EPA's Technical Support Document (TSD) which accompanied our proposed approval of Rule 4694, we described our concerns with the alternative compliance provisions, which only affected the fermentation provisions. Because of EPA's concerns, the District elected to withdraw from consideration for SIP approval the wine fermentation provisions, although the fermentation provisions remain in effect at the local level. The appropriate forum to raise the commenter's concerns would have been the District's process for amending the submittal of Rule 4694. EPA is only acting on SJVUAPCD's current SIP submittal. As discussed in our TSD, EPA's approval of Rule 4694 without the fermentation provisions does not relax any SIP requirements or commitments.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California 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. 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, 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

[1] While the commenters also believe that their cost effectiveness estimates would be significantly lowered (e.g., if the control system was scaled up and optimized, or if the potential commercial value of the captured ethanol was realized), we did not take these estimates into account at this time because these scenarios have not yet been demonstrated.

of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2013. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 30, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(416) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(416) Specified portions of the following rule were submitted on November 18, 2011 by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(*1*) The following specified portions of SJVUAPCD Rule 4694, Wine Fermentation and Storage Tanks, adopted December 15, 2005:

(*i*) Section 1.0 (Purpose), except for the words ''fermentation and'' and ''or achieve equivalent reductions from alternative emission sources'';

(*ii*) Section 2.0 (Applicability), except for the words ''fermenting wine and/or'';

(*iii*) Section 3.0 (Definitions), paragraphs 3.1—Air Pollution Control Officer (APCO), 3.2—Air Resources Board (ARB or CARB), 3.18—Gas Leak, 3.19—Gas-Tight, 3.21—Must, 3.22—Operator, 3.27—Storage Tank, 3.29—Tank, 3.33—Volatile Organic Compound (VOC), 3.35—Wine, and 3.36—Winery;

(*iv*) Section 4.0 (Exemptions), paragraph 4.2;

(*v*) Section 5.0 (Requirements), paragraph 5.2—Storage Tanks; and

(*vi*) Section 6.0 (Administrative Requirements), paragraph 6.4—Monitoring and Recordkeeping, introductory text and paragraph 6.4.2.

(ii) Additional materials.

(A) California Air Resources Board (CARB)

(*1*) CARB Executive Order S–11–024, November 18, 2011, adopting specified portions of SJVUAPCD Rule 4694 as a revision to the SIP.

(B) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

(*1*) SJVUAPCD Resolution No. 11–08–20, August 18, 2011, adopting specified portions of SJVUAPCD Rule 4694 as a revision to the SIP.

[FR Doc. 2012–28826 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0935, FRL–9755–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Florida; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing a full approval of the Best Available Retrofit Technology (BART) determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a regional haze state implementation plan (SIP) submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP). These BART determinations were submitted to the EPA in a draft regional haze SIP on April 13, 2012, for parallel processing, and re-submitted in final form on September 17, 2012. Specifically, the portion of Florida's September 17, 2012, regional haze SIP that is being acted upon in this final action addresses some of the requirements of the Clean Air Act (CAA or Act) and the EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. The EPA will take separate action at a later date to address the remainder of Florida's September 17, 2012, regional haze SIP.

DATES: *Effective Date:* This rule will be effective December 31, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0935. 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. The EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni may be reached by phone at (404) 562–9031, or via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this final action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, the EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. The EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. The EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On March 19, 2010, and August 31, 2010, FDEP submitted and subsequently amended a SIP to address regional haze due to emissions from sources in the State's and other states' Class I areas. On May 25, 2012, the EPA published an action proposing a limited approval of Florida's regional haze SIP to address the first implementation period.[1] *See* 77 FR 31240. The EPA's May 25, 2012, proposed rulemaking covered Florida's March 19, 2010, and August 31, 2010, regional haze SIP submittals as well as the State's April 13, 2012, draft regional haze SIP that was submitted for parallel processing, and subsequently re-submitted in final form on September 17, 2012. In a draft regional haze SIP provided on July 31, 2012, Florida addressed 18 reasonable progress units and 11 facilities with BART-eligible electric generating units (EGUs) subject to the Clean Air Interstate Rule (CAIR) (a total of 20 EGUs) that were not covered by Florida's April 13, 2012, draft regional haze SIP.[2] It also amended the SIP to remove Florida's reliance on CAIR to satisfy BART and reasonable progress requirements for the State's affected EGUs.

Florida's September 17, 2012, final regional haze SIP consolidated its draft April 13, 2012, and July 31, 2012, regional haze SIP submittals into a single package. The EPA has not yet proposed action on Florida's July 31, 2012, draft regional haze SIP as finalized on September 17, 2012. Because of the interdependence between the various elements of Florida's regional haze SIP, the EPA has elected to: (1) Take final action on the BART determinations addressed in the May 25, 2012, proposed action; and (2) defer final action on the remaining elements of the SIP addressed in the Agency's May 25, 2012, proposed action until it has taken action on the BART and reasonable progress determinations for the facilities included in Florida's draft July 31, 2012, regional haze SIP. As such, today's final action fully approves all of the BART determinations addressed in the EPA's May 25, 2012, proposed action. The EPA will propose action on the remaining facilities addressed in Florida's July 31, 2012, draft regional haze SIP (as finalized in the September 17, 2012, final regional haze SIP) and take final action on the entire remaining elements of Florida's regional haze plan in actions subsequent to today's final rulemaking.

II. What is the action the EPA is taking?

The EPA is finalizing a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a draft regional haze SIP submitted by the State of Florida on April 13, 2012, to the EPA for parallel processing. Florida re-submitted this draft regional haze SIP in final form on September 17, 2012.[3]

Specifically, the BART determinations addressed by this action are: Tampa Electric Company—Big Bend Station (Units 1, 2, 3); City of Tallahassee—Purdom Generating Station (Unit 7); FP&L—Port Everglades Power Plant (Units 3, 4); CEMEX; White Springs Agricultural Chemical—SR/SC Complex; City of Gainesville—Deerhaven Generating Station (Unit 3); City of Vero Beach—City of Vero Beach Municipal Utilities (Units 2, 3, 4); FP&L—Putnam Power Plant (Units 3, 4, 5, 6, 7, 8, 9, 10); Lake Worth Utilities—Tom G. Smith (Units 6, 9); City of Tallahassee—Arvah B. Hopkins

[1] In a separate action published on December 30, 2011 (76 FR 88219), the EPA proposed a limited disapproval of the Florida regional haze SIP, and on June 7, 2012 (77 FR 33642), the EPA finalized a limited disapproval of the regional haze SIPs for several states, but deferred final action on the Florida regional haze SIP. The EPA will address this limited disapproval when it completes action on the remainder of Florida's September 17, 2012, regional haze SIP.

[2] The facilities addressed in the July 31, 2012, proposed amendment for reasonable progress are: City of Gainesville Deerhaven unit 5; Florida Power & Light (FP&L) Manatee units 1, 2; FP&L Turkey Point units 1, 2; Gulf Power Company Crist unit 7; Lakeland Electric C.D. McIntosh unit 3; JEA Northside/St. Johns River Power Park (SJRPP) units 3, 16, 17; Progress Energy Anclote units 1, 2; Progress Energy Crystal River units 1, 2, 3, 4; and Seminole Electric Cooperative units 1, 2. The facilities addressed in the July 31, 2012, proposed amendment for BART are: City of Tallahassee—Arvah B.Hopkins Generating Station (unit 1); Progress Energy Anclote Power Plant (units 1, 2); Progress Energy Crystal River Power Plant (units 1, 2); FP&L Manatee Power Plant (units 1, 2); FP&L Martin Power Plant (units 1, 2); FP&L Turkey Point Power Plant (units 1, 2); Gulf Power Company Crist Electric Generating Plant (units 6, 7); Gulf Power Company Lansing Smith Plant (units 1, 2); JEA Northside SJRPP (unit 3); Lakeland Electric C.D. McIntosh, Jr. Power Plant (units 1, 2); and Reliant Energy Indian River (units 2, 3).

[3] The EPA proposed approval of FDEP's April 13, 2012, draft regional haze SIP contingent upon Florida providing the EPA a final regional haze SIP that was not changed significantly from the April 13, 2012, draft regional haze SIP. Florida provided its final regional haze SIP on September 17, 2012. There were no substantive changes made to the final submittal for these facilities.

Generating Station (Unit 4); FP&L—Riviera Power Plant (Unit 4); Florida Power Corp.—Bartow Plant (Unit 3); Lakeland Electric—Charles Larsen Memorial Power Plant (Unit 4); Ft. Pierce Utilities Authority—H D King Power Plant (Units 7, 8); FP&L—Cape Canaveral Power Plant (Units 1, 2); Atlantic Sugar Association—Atlantic Sugar Mill; Buckeye Florida—Perry; ExxonMobil Production—St. Regis Treating Facility and Jay Gas Plant; IFF Chemical Holdings, Inc.; IMC Phosphates Company—South Pierce; International Paper Company—Pensacola Mill; Mosaic—Bartow; Mosaic—Green Bay Plant; Osceola Farms; Sugar Cane Growers Co-Op; U.S. Sugar Corp.—Clewiston Mill and Refinery; Solutia Inc., Sterling Fibers, Inc.; U.S. Sugar Corp.—Bryant Mill; IMC Phosphates Company—Port Sutton Terminal; Georgia Pacific-Palatka; Smurfit-Stone-Fernandina Beach; Smurfit-Stone–Panama City; Mosaic-New Wales; Mosaic-Riverview; and CF Industries.

On May 25, 2012, the EPA proposed a limited approval of the March 19, 2010, August 31, 2010, and draft April 13, 2012, regional haze SIP submittals to implement the regional haze requirements for Florida on the basis that these submissions, as a whole, strengthen the Florida SIP. In today's action, the EPA has elected to finalize approval of only those BART determinations identified above and to defer final action on the remaining elements of the regional haze SIP addressed in the Agency's May 25, 2012, proposed action. The EPA will take final action on those remaining elements once it has taken action on the BART and reasonable progress determinations for the facilities included in Florida's July 31, 2012, draft regional haze SIP as incorporated into its September 17, 2012, final regional haze SIP.

The EPA received adverse comments on its May 25, 2012, proposed action on Florida's regional haze SIP. See section III of this rulemaking for a summary of the comments received on the EPA's May 25, 2012, proposed action that relate to the BART determinations being acted upon today and the Agency's responses to these comments. Detailed background information and the EPA's rationale for the proposed action is provided in the EPA's May 25, 2012, proposed rulemaking. *See* 77 FR 31240.

The EPA's May 25, 2012, proposed action was contingent upon Florida providing a final regional haze SIP that was substantively the same as the draft proposed for approval by the EPA in the proposed rulemaking. *See* 77 FR 31242. Florida provided its final regional haze SIP on September 17, 2012. While there are minor differences between the provisions covered by the April 13, 2012, draft regional haze SIP and those same provisions addressed in the final September 17, 2012, regional haze SIP, the EPA has determined that these differences do not warrant re-proposal of this action.

III. What are the EPA's responses to comments received on this action?

The EPA received two sets of comments on its May 25, 2012, proposed rulemaking on Florida's regional haze SIP described above. Specifically, the comments were received from the Sierra Club and National Parks Conservation Association (collectively) and from the Florida Electric Power Coordinating Group Environment Committee. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as ''the Commenter'') are provided in the docket for today's final action. A summary of the comment that relates to the approvability of the BART determinations subject to today's final action and the EPA's response is provided below. The remaining comments will be addressed in a subsequent final action on the remaining elements of Florida's regional haze SIP.

Comment 1: The Commenter believes that the EPA must clarify its proposed decisions on Florida's BART determinations. The Commenter notes that the proposal ''includes BART proposals for the five sources listed in Table 8 as 'Facilities With Unit(s) With a Complete BART Analysis,' '' but it does not believe that the EPA clearly states that it is proposing to approve or disapprove the State's BART disposition for each of these sources. If the EPA is approving them, the Commenter states that it must include them as part of the enforceable conditions of the regional haze SIP.

Response 1: The EPA specifically addressed each of the proposed BART determinations for the five sources identified by the Commenter in five subsections under the portion of the notice addressing BART (section V.C.6), and in a subsection entitled ''EPA Assessment'' (section V.C.6.vi), stated that ''EPA proposes to agree with Florida's analyses and conclusions for the five BART-subject sources described above. The EPA has reviewed the State's analyses and believes that they were conducted in a manner that is consistent with the EPA's BART Guidelines and the EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*).'' This is a clear statement of the EPA's intent to approve these BART determinations. Regarding the emissions limits and conditions for these five BART determinations that were adopted by Florida and have been incorporated into the facilities' federally enforceable title V operating permits, the EPA has incorporated these limits and conditions into the SIP in 40 CFR 52.520 as part of this final action.

IV. What is the effect of this final action?

The EPA is finalizing a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a draft regional haze SIP submitted by the State of Florida on April 13, 2012, to the EPA for parallel processing. Florida submitted this draft regional haze SIP in final form on September 17, 2012. The EPA is taking this approach because these BART determinations meet the regional haze requirements of the CAA and RHR and because Florida's SIP will be stronger and more protective of the environment with the implementation of these measures. The EPA has elected to defer final action on the remaining elements of the regional haze SIP addressed in the Agency's May 25, 2012, proposed action because of the interdependence between the various elements of Florida's regional haze SIP. The EPA will take final action on the remaining elements once it has taken action on the BART and reasonable progress determinations for the facilities included in Florida's July 31, 2012, draft regional haze SIP, as incorporated into its September 17, 2012, final regional haze SIP. As mentioned above, Florida's September 17, 2012, regional haze SIP addresses 18 reasonable progress units and 11 facilities with BART-eligible EGUs subject to CAIR (a total of 20 EGUs) that were not covered by Florida's April 13, 2012, draft regional haze SIP. The EPA will also take action at a later date to address the Agency's December 30, 2011, proposed limited disapproval of the Florida regional haze plan.

V. Final Action

The EPA is finalizing a full approval of the BART determinations addressed in the Agency's May 25, 2012, proposed rulemaking action on a draft regional haze SIP submitted by the State of Florida on April 13, 2012, to the EPA for parallel processing. Florida re-submitted this regional haze SIP in final form on September 17, 2012. Specifically, this action addresses only the aforementioned BART determinations included in the draft regional haze SIP

submitted to the EPA for parallel processing on April 13, 2012 (as re-submitted in final form on September 17, 2012), as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.

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, the 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 the 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, and the 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. The 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 January 28, 2013. 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 dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 15, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520(e) is amended by adding a new entry for ''Portion of Regional Haze Plan Amendment submitted on September 17, 2012'' at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
*	*	*	*	*
Portion of Regional Haze Plan Amendment submitted on September 17, 2012.	September 17, 2012	11–29–12	[Insert citation of publication]	Only the BART determinations approved in [Insert citation of publication] are incorporated.

[FR Doc. 2012–28824 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0797; FRL–9755–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Incorporation by Reference of Pennsylvania's Consumer Products Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The SIP revision adds Section 2105.88—Consumer Products from Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control to incorporate by reference 25 *Pa. Code* sections 130.201–130.471 (Consumer Products) of the PADEP Air Pollution Control Act. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on January 28, 2013 without further notice, unless EPA receives adverse written comment by December 31, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0797 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0797, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0797. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 25, 2012, PADEP submitted to EPA a revision to the Allegheny County portion of the Pennsylvania SIP. The SIP revision seeks to add Section 2105.88—Consumer Products from ACHD's Rules and Regulations, Article XXI, Air Pollution Control to incorporate by reference 25 *Pa. Code* sections 130.201–130.471 (Consumer Products) of PADEP's Air Pollution Control Act. This regulation controls the volatile organic compound (VOC) content of consumer products for sale in the Commonwealth of Pennsylvania in order to reduce VOC levels.

On December 8, 2004 (69 FR 70895), EPA approved into the Pennsylvania SIP 25 *Pa. Code* Chapter 130, Subchapter B, that included VOC content limits for consumer products. On October 18, 2010 (75 FR 63717), EPA approved a revision to the Pennsylvania SIP that amended 25 *Pa. Code* Chapter 130, Subchapter B in order to add and revise VOC content limits of consumer products. In addition, the approved SIP revision added and amended definitions in order to provide clarity. ACHD is incorporating by reference the same provisions in 25 *Pa. Code* sections 130.201–130.471 in order to regulate consumer products in Allegheny County. Further details of the Commonwealth of Pennsylvania's regulation for consumer products can be found in Docket ID No. EPA–R03–OAR–2010–0319 at *www.regulations.gov.*

II. Summary of SIP Revision

The Pennsylvania SIP revision adds section 2105.88 from ACHD Rules and Regulations, Article XXI, Air Pollution Control to incorporate by reference Pennsylvania's regulation for consumer products promulgated under the Air Pollution Control Act at 25 *Pa. Code* sections 130.201–130.471. The incorporation by reference provides that section 2105.88 shall be applied consistent with the provisions of Pennsylvania's regulation for consumer products. Any additions, revisions, or deletions to the consumer products regulation by Pennsylvania shall be incorporated into section 2105.88 and are effective on the date established by Pennsylvania regulations. The addition of section 2105.88 to ACHD Rules and Regulations provides ACHD the authority to request information on VOC levels in consumer products that are listed in 25 *Pa. Code* sections 130.201–130.471 for sale in Allegheny County to ensure that products do not exceed accepted VOC levels, establishes that all information on consumer products sought under section 2105.88 shall be

subject to ACHD's preexisting confidentiality regulations, and establishes that all consumer products seeking a variance from section 2105.88 must submit all variance requests to PADEP.

III. Final Action

EPA is approving the Pennsylvania SIP revision that incorporates by reference Pennsylvania's consumer products regulations into ACHD Rules and Regulations, Article XXI, Air Pollution Control. EPA's review of the SIP revision submitted by PADEP on June 25, 2012 indicates it will strengthen the SIP requirements, result in reductions of VOC, and meet all applicable Federal regulations and the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 28, 2013 without further notice unless EPA receives adverse comment by December 31, 2012. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2013. 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 approving the incorporation by reference of Pennsylvania's consumer products regulations into ACHD Rules and Regulations, Article XXI, Air Pollution Control 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 6, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by adding Section 2105.88 after the existing entry for Section 2105.79 to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
Part E—Source Emission and Operating Standards				
*	*	*	*	*
Subpart 7—Miscellaneous VOC Sources				
*	*	*	*	*
Section 2105.88	Consumer Products	4/3/12	11/29/12 *[Insert page number where the document begins]*.	New section is added.
*	*	*	*	*

* * * * *

[FR Doc. 2012–28837 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0785; FRL–9755–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Incorporation by Reference of Pennsylvania's Control of NO_X Emissions From Glass Melting Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP). The SIP revision adds a regulation to control nitrogen oxides (NO_X) emissions from glass melting furnaces to the Allegheny County Health Department (ACHD) Rules and Regulations. The ACHD regulation incorporates by reference the Pennsylvania regulations and related definitions for controlling NO_X emissions from glass melting furnaces. The SIP revision is a regulation that will reduce emissions of NO_X from glass melting furnaces. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on January 28, 2013 without further notice, unless EPA receives adverse written comment by December 31, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0785 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0785, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0785. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 25, 2012, PADEP submitted to EPA a revision to the Allegheny

County portion of the Pennsylvania SIP. The SIP revision seeks to add Section 2105.101 (Control of NO_X Emissions from Glass Melting Furnaces) to ACHD's Rules and Regulations, Article XXI, Air Pollution Control to incorporate by reference 25 *Pa. Code* Sections 129.301 through 129.310 (Control of NO_X Emissions from Glass Melting Furnaces) and related definitions at 25 *Pa. Code* Section 121.1 of PADEP's Air Pollution Control Act. This regulation controls NO_X emissions from glass melting furnaces. The reduction of NO_X emissions also reduces visibility impairment and acid deposition.

On August 22, 2011 (76 FR 52283), EPA approved into the Pennsylvania SIP 25 *Pa. Code* Chapter 129, Sections 129.301 through 129.310 that included NO_X content limits from glass melting furnaces and approved related amended definitions at 25 *Pa. Code* Section 121.1. ACHD is incorporating by reference the same provisions in 25 *Pa. Code* Sections 121.1 and 129.301 through 129.310 in order to regulate NO_X emissions from glass melting furnaces in Allegheny County. Further details of Pennsylvania's regulation for the control of NO_X emissions from glass melting furnaces can be found in Docket ID No. EPA–R03–OAR–2011–0286 at *www.regulations.gov.*

II. Summary of SIP Revision

The Pennsylvania SIP revision adds Section 2105.101 to ACHD Rules and Regulations, Article XXI, Air Pollution Control to incorporate by reference Pennsylvania's control of NO_X from glass melting furnaces promulgated under the Air Pollution Control Act at 25 *Pa. Code* Sections 129.301 through 129.310 and related definitions at 25 *Pa. Code* Section 121.1. The incorporation by reference provides that Section 2105.101 shall be applied consistent with the provisions of Pennsylvania's control of NO_X emissions from glass melting furnaces. Any additions, revisions, or deletions to the glass melting furnaces regulation by Pennsylvania shall be incorporated into Section 2105.101 and are effective on the date established by Pennsylvania regulation. By incorporating this regulation, ACHD removes any uncertainty regarding enforceability of NO_X limits on glass melting furnaces in Allegheny County by ACHD. Included in the Air Pollution Control Act at 25 *Pa. Code* Sections 129.301 through 129.310 are explicit references to the authority of local air agencies including Allegheny County to regulate NO_X levels from glass melting furnaces. By incorporating this regulation, an additional copy verifying ACHD's authority will be found in Article XXI.

III. Final Action

EPA is approving the Pennsylvania SIP revision that incorporates by reference Pennsylvania's control of NO_X emissions from glass melting furnaces into ACHD Rules and Regulations, Article XXI, Air Pollution Control. EPA's review of the SIP revision submitted by PADEP on June 25, 2012 indicates it will strengthen the SIP requirements, result in reductions of NO_X emissions, and meet all applicable Federal regulations and the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 28, 2013 without further notice unless EPA receives adverse comment by December 31, 2012. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 28, 2013. 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 approving the incorporation by reference of Pennsylvania's control of NO_X emissions from glass melting furnaces into ACHD Rules and Regulations, Article XXI, Air Pollution Control 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 7, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by adding a heading for Subpart 10 and an entry for Section 2105.101 after the entry for Section 2105.90 to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
Part E—Source Emission and Operating Standards				
*	*	*	*	*
Subpart 10—NO_X Sources				
Section 2105.101	Control of NO_X Emissions from Glass Melting Furnaces.	4/3/12	11/29/12 *[Insert page number where the document begins].*	New subpart and section are added.
*	*	*	*	*

* * * * *

[FR Doc. 2012–28831 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0702; FRL–9755–5]

Approval and Promulgation of State Implementation Plans; City of Albuquerque-Bernalillo County, New Mexico; Interstate Transport Affecting Visibility and Regional Haze Rule Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the City of Albuquerque—Bernalillo County, New Mexico State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. The EPA finds that these revisions to the State Implementation Plan (SIP) and associated rules meet the requirements of the Clean Air Act (CAA) and comply with the provisions of 40 CFR 51.309, thereby meeting requirements for reasonable progress for the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report for approval of the plan through 2018. We are also approving SIP submissions offered as companion rules to the Section 309 regional haze plan, specifically, rules for the Sulfur Dioxide Emissions Inventory Requirements and the Western Backstop Trading Program, submitted on December 26, 2003, September 10, 2008, and May 24, 2011, and rules for Open Burning, submitted on December 26, 2003 and July 28, 2011. These SIP revisions were submitted to address the requirements of the Act and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

We are also approving a portion of the SIP revision submitted by the City of Albuquerque—Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. We are approving the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states. EPA is taking this action pursuant to section 110 of the CAA.

DATES: This final rule is effective December 31, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2008–0702. All documents in the docket are listed on the *www.regulations.gov* Web site.

Publicly available docket materials are available either electronically through *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 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at our Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Michael Feldman, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–9793; fax number 214–665–7263; email address *feldman.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

iii. The initials *SIP* mean or refer to State Implementation Plan.

iv. The initials *RH* and *RHR* mean or refer to Regional Haze and Regional Haze Rule.

v. The initials *BC* and the words *Albuquerque* and *Bernalillo County* mean the City of Albuquerque-Bernalillo County, New Mexico

vi. The initials *AQCB* mean or refer to the Albuquerque/Bernalillo County Air Quality Control Board.

vii. The initials *BART* mean or refer to Best Available Retrofit Technology.

viii. The initials *OC* mean or refer to organic carbon.

ix. The initials *EC* mean or refer to elemental carbon.

x. The initials *VOC* mean or refer to volatile organic compounds.

xi. The initials *EGUs* mean or refer to Electric Generating Units.

xii. The initials NO_X mean or refer to nitrogen oxides.

xiii. The initials SO_2 mean or refer to sulfur dioxide.

xiv. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xv. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic of less than 2.5 micrometers.

xvi. The initial *RPGs* mean or refer to reasonable progress goals.

xvii. The initials *RPOs* mean or refer to regional planning organizations.

xviii. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

xix. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

Table of Contents

I. Background

The CAA requires each state to develop plans, referred to as SIPs, to meet various air quality requirements. A state must submit its SIPs and SIP revisions to us for approval. The Albuquerque/Bernalillo County Air Quality Control Board (AQCB) is the federally delegated air quality authority for the City of Albuquerque and Bernalillo County, New Mexico (BC). The AQCB is authorized to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards. The AQCB has submitted a Section 309 regional haze SIP for its geographic area of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4). The BC RH SIP is a necessary component of the regional haze plan for the entire State of New Mexico and is also necessary to ensure the requirements of Section 110(a)(2)(D)(i) of the CAA are satisfied for the entire State of New Mexico. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. This action involves the requirement that states have SIPs that address regional haze and address the requirement that emissions from a state do not interfere with measures of other states to protect visibility.

A. Regional Haze

In 1990, Congress added section 169B to the CAA to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007. 40 CFR 51.308(b).

The AQCB submitted the BC RH SIP to EPA on July 28, 2011, and it adds to earlier RH SIP planning components that were submitted on December 26, 2003.

B. Interstate Transport and Visibility

On July 18, 1997, we promulgated new NAAQS for 8-hour ozone and for $PM_{2.5}$. 62 FR 38652. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as we may prescribe. Section 110(a)(2)(D)(i)(II) of the Act requires that states have a SIP, or submit a SIP revision, containing provisions ''prohibiting any source or other type of emission activity within the state from emitting any air pollutant in amounts which will * * * interfere with measures required to be included in the applicable implementation plan for any other State under part C [of the CAA] * * * to protect visibility.'' Because of the impacts on visibility from the interstate transport of pollutants, we interpret the ''good neighbor'' provisions of section 110 of the Act described above as requiring states to include in their SIPs either measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states, or a demonstration that emissions from BC sources and activities will not have the prohibited impacts on other states' existing SIPs.

The EPA received a SIP revision adopted by AQCB on September 12, 2007 to address the interstate transport provisions of CAA 110(a)(2)(D)(i) for the 1997 ozone and $PM_{2.5}$ NAAQS.

C. Lawsuits

In a lawsuit in the U.S. District Court for the District of Columbia, environmental groups sued us for our failure to timely take action with respect to the regional haze requirements of the CAA and our regulations. In particular, the lawsuit alleged that we had failed to promulgate federal implementation plans (FIPs) for these requirements within the two-year period allowed by CAA section 110(c) or, in the alternative, fully approve SIPs addressing these requirements.

As a result of this lawsuit, we entered into a consent decree. The consent decree requires that we sign a notice of final rulemaking addressing the regional haze requirements for Bernalillo County by November 15, 2012. We are meeting that requirement with the signing of this notice of final rulemaking.

D. Our Proposal

We signed our notice of proposed rulemaking on April 12, 2012, and it was published in the **Federal Register** on April 25, 2012 (77 FR 24768). In that notice, we provided a detailed description of the various regional haze requirements and interstate transport and visibility requirements. We are not repeating that description here; instead, the reader should refer to our notice of proposed rulemaking for further detail. In our proposal, we proposed to approve BC SIP revisions submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We proposed to find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. We also proposed to approve a portion of the BC SIP revision submitted on July 30, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS. This proposal proposed to approve the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states.

E. Public Participation

We requested comments on all aspects of our proposed action and provided a thirty-day comment period, with the comment period closing on May 25, 2012. We received comments on our proposed rule that supported our proposed action and that were critical of our proposed action. In this action, we are responding to the comments we have received, taking final rulemaking action, and explaining the bases for our action.

II. Final Action

In this action, EPA is approving City of Albuquerque—Bernalillo County, New Mexico SIP revisions submitted on July 28, 2011 addressing the regional haze requirements for the mandatory Class I areas under 40 CFR 51.309. We find that all reviewed components of the SIP meet the requirements of 40 CFR 51.309. In conjunction with this approval, we are also approving the following related rules: 20.11.46 NMAC, *Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program* (submitted after initial adoption on December 26, 2003, with revisions submitted on September 10, 2008, and May 24, 2011) and 20.11.21 NMAC, *Open Burning* (submitted after initial adoption on December 26, 2003, with revisions submitted on July 28, 2011).

We are approving a portion of the SIP revision submitted by the City of Albuquerque—Bernalillo County, New Mexico on July 30, 2007, for the purpose of addressing the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the $PM_{2.5}$ NAAQS.[1] We are approving the portion of the SIP submittal that addresses the CAA requirement concerning non-interference with programs to protect visibility in other states.

III. Basis for Our Final Action

We have fully considered all significant comments on our proposal and have concluded that no changes from our proposal are warranted. Our action is based on an evaluation of BC's regional haze SIP submittal against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. A detailed explanation of how the Albuquerque SIP submittal meets these requirements is contained in the proposal. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. Our authority for action on BC's SIP submittal is based on CAA section 110(k).

We are approving BC's regional haze SIP provisions because they meet the relevant regional haze requirements. Most of the adverse comments we received concerning our proposed approval of the regional haze SIP pertained to our proposed approval of the SO_2 backstop trading program.

IV. Issues Raised by Commenters and EPA's Responses

A. Comments and Responses Common to Participating States Regarding Proposed Approval of the SO_2 Backstop Trading Program Components of the RH SIPS

EPA has proposed to approve the SO_2 backstop trading program components of the RH SIPs for all participating States and has done so through four separate proposals: For the Bernalillo County proposal see 77 FR 24768 (April 25, 2012); For the Utah proposal see 77 FR 28825 (May 15, 2012); for the Wyoming proposal see 77 FR 30953 (May 24, 2012); finally, for the New Mexico proposal see 77 FR 36043 (June 15, 2012). National conservation organizations paired with organizations local to each state have together submitted very similar, if not identical, comments on various aspects of EPA's proposed approval of these common program components. These comment letters may be found in the docket for each proposal and are dated as follows: May 25, 2012 for Bernalillo County; July 16, 2012 for Utah; July 23, 2012 for Wyoming; and July 16, 2012 for New Mexico. Each of the comment letters has attached a consultant's report dated May 25, 2012, and titled: ''Evaluation of Whether the SO_2 Backstop Trading Program Proposed by the States of New Mexico, Utah and Wyoming and Albuquerque-Bernalillo County Will Result in Lower SO_2 Emissions than Source-Specific BART.'' In this section, we address and respond to those comments we identified as being consistently submitted and specifically directed to the component of the published proposals dealing with the submitted SO_2 backstop trading program. For our organizational purposes, any additional or unique comments found in the conservation organization letter that is applicable to this proposal (i.e., for the City of Albuquerque -Bernalillo County) will be addressed in the next section where we also address all other comments received.

Comment: The language of the Clean Air Act appears to require BART. The commenter acknowledges that prior case law affirms EPA's regulatory basis for having ''better than BART'' alternative measures, but nevertheless asserts that it violates Congress' mandate for an alternative trading program to rely on emissions reductions from non-BART sources and excuse EGUs from compliance with BART.

Response: The Clean Air Act requires BART ''as may be necessary to make reasonable progress toward meeting the national goal'' of remedying existing impairment and preventing future impairment at mandatory Class I areas. See CAA Section 169A(b)(2). In 1999, EPA issued regulations allowing for alternatives to BART based on a reading of the CAA that focused on the overarching goal of the statute of achieving progress. EPA's regulations provided states with the option of implementing an emissions trading program or other alternative measure in

[1] There are four ''prongs'' under the ''good neighbor'' provisions of the CAA section 110(a)(2)(D)(i). On November 8, 2012 (75 FR 68447), we approved a SIP revision that air pollutant emissions from sources within BC do not significantly contribute to nonattainment of the 1997 ozone NAAQS and the $PM_{2.5}$ NAAQS in any other state. On September 19, 2012, we approved a SIP revision that air pollutant emissions from sources within BC do not interfere with prevention of significant deterioration (PSD) measures required in the SIP of any other state for the 1997 ozone and $PM_{2.5}$ NAAQS.

lieu of BART so long as the alternative would result in greater reasonable progress than BART. We note that this interpretation of CAA Section 169A(B)(2) was determined to be reasonable by the D.C. Circuit in *Center for Energy and Economic Development* v. *EP*A, 398 F.3d 653, 659–660 (D.C. Cir. 2005) in a challenge to the backstop market trading program under Section 309, and again found to reasonable by the D.C. Circuit in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333, 1340 (D.C. Cir. 2006) (''* * * [W]e have already held in *CEED* that EPA may leave states free to implement BART-alternatives so long as those alternatives also ensure reasonable progress.''). Our regulations for alternatives to BART, including the provisions for a backstop trading program under Section 309, are therefore consistent with the Clean Air Act and not in issue in this action approving a SIP submitted under those regulations. We have reviewed the submitted 309 trading program SIPs to determine whether each has the required backstop trading program (see 40 CFR 51.309(d)(4)(v)), and whether the features of the program satisfy the requirements for trading programs as alternatives to BART (see 40 CFR 51.308(e)(2)). Our regulations make clear that any market trading program as an alternative to BART contemplates market participation from a broader list of sources than merely those sources that are subject to BART. See 40 CFR 51.308(e)(2)(i)(B).

Comment: The submitted 309 Trading Program is defective because only 3 of 9 Transport States remain in the program. The Grand Canyon Visibility Transport Commission Report clearly stated that the program must be ''comprehensive.'' The program fails to include the other Western States that account for the majority of sulfate contribution in the Class I areas of participating States, and therefore Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participation by other Transport Region States compounds the program's deficiencies.

Response: We disagree that the 309 trading program is defective because only 3 States remain in the program. EPA's regulations do not require a minimum number of Transport Region States to participate in the 309 trading program, and there is no reason to believe that the limited participation by the 9 Transport States will limit the effectiveness of the program in the 3 States that have submitted 309 SIPs. The commenter's argument is not supported by the regional haze regulations and is demonstrably inconsistent with the resource commitments of the Transport Region States that have worked for many years in the WRAP to develop and submit SIPs to satisfy 40 CFR 51.309. At the outset, our regulations affirm that ''certain States * * * may choose'' to comply with the 40 CFR 51.309 requirements and conversely that ''[a]ny Transport Region State [may] elect not to submit an implementation plan'' to meet the optional requirements. 40 CFR 51.309(a); see also 40 CFR 51.309(f). We have also previously observed how the WRAP, in the course of developing its technical analyses as the framework for a trading program, ''understood that some States and Tribes may choose not to participate in the optional program provided by 40 CFR 51.309.'' 68 FR 33769 (June 5, 2003). Only five of nine Transport Region States initially opted to participate in the backstop trading program in 2003, and of those initial participants only Oregon and Arizona later elected not to submit 309 SIPs.

We disagree with the commenter's assertion that Class I areas on the Colorado Plateau will see little or no visibility benefit. Non-participating States must account for sulfate contributions to visibility impairment at Class I areas by addressing all requirements that apply under 40 CFR 51.308. To the extent Wyoming, New Mexico and Utah sources ''do not account for the majority of sulfate contribution'' at the 16 class I areas on Colorado Plateau, there is no legal requirement that they account for SO_2 emissions originating from sources outside these participating States. Aside from this, the modeling results detailed in the proposed rulemaking show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on the 20 percent best days at all 16 of the mandatory Class I areas under the submitted 309 plan.

Finally, we do not agree with the commenter's characterization of the Grand Canyon Visibility Transport Commission Report, which used the term ''comprehensive'' only in stating the following:

> ''It is the intent of [the recommendation for an incentive-based trading program] that [it] include as many source categories and species of pollutants as is feasible and technically defensible. This preference for a 'comprehensive' market is based upon the expectation that a comprehensive program would be more effective at improving visibility and would yield more cost-effective emission reduction strategies for the region as a whole.'' [2]

[2] The Grand Canyon Visibility Transport Commission, *Recommendations for Improving Western Vistas* at 32 (June 10, 1996).

It is apparent that the Grand Canyon Visibility Transport Commission recommended comprehensive source coverage to optimize the market trading program. This does not necessitate or even necessarily correlate with geographic comprehensiveness as contemplated by the comment. We note that the submitted backstop trading program does in fact comprehensively include ''many source categories,'' as may also be expected for any intrastate trading program that any state could choose to develop and submit under 40 CFR 51.308(e)(2). As was stated in our proposal, section 51.309 does not require the participation of a certain number of States to validate its effectiveness.

Comment: The submitted 309 trading program is defective because the pollutant reductions from participating States have little visibility benefit in each other's Class I areas. The States that have submitted 309 SIPs are ''largely non-contiguous'' in terms of their physical borders and their air shed impacts. Sulfate emissions from each of the participating States have little effect on Class I areas in other participating States.

Response: We disagree. The 309 program was designed to address visibility impairment for the sixteen Class I areas on the Colorado Plateau. New Mexico, Wyoming and Utah are identified as Transport Region States because the Grand Canyon Visibility Transport Commission had determined they could impact the Colorado Plateau class I areas. The submitted trading program has been designed by these Transport Region States to satisfy their requirements under 40 CFR 51.309 to address visibility impairment at the sixteen Class I areas. The strategies in these plans are directed toward a designated clean-air corridor that is defined by the placement of the 16 Class I areas, not the placement of state borders. ''Air sheds'' that do not relate to haze at these Class I areas or that relate to other Class I areas are similarly not relevant to whether the requirements for an approvable 309 trading program are met. As applicable, any Transport Region State implementing the provisions of Section 309 must also separately demonstrate reasonable progress for any additional mandatory Class I Federal areas other than the 16 Class I areas located within the state. See 40 CFR 51.309(g). More broadly, the State must submit a long-term strategy to address these additional Class I areas as well as those Class I areas located outside the state which may be affected by emissions from the State. 40 CFR 51.309(g) and

51.308(d)(2). In developing long-term strategies, the Transport Region States may take full credit for visibility improvements that would be achieved through implementation of the strategies required by 51.309(d). A state's satisfaction of the requirements of 51.309(d), and specifically the requirement for a backstop trading program, is evaluated independently from whether a state has satisfied the requirements of 51.309(g). In neither case, however, does the approvability inquiry center on the location or contiguousness of state borders.

Comment: The emission benchmark used in the submitted 309 trading program is inaccurate. The ''better-than-BART'' demonstration needs to analyze BART for each source subject to BART in order to evaluate the alternative program. The submitted 309 trading program has no BART analysis. The ''better-than-BART'' demonstration does not comply with the regional haze regulations when it relies on the presumptive SO_2 emission rate of 0.15 lb/MMBtu for most coal-fired EGUs. The presumptive SO_2 limits are inappropriate because EPA has elsewhere asserted that ''presumptive limits represented control capabilities at the time the BART Rule was promulgated, and that [EPA] expected that scrubber technology would continue to improve and control costs would continue to decline.'' 77 Fed. Reg. 14614 (March 12, 2012).

Response: We disagree that the submitted 309 trading program requires an analysis that determines BART for each source subject to BART. Source specific BART determinations are not required to support the better-than-BART demonstration when the ''alternative measure has been designed to meet a requirement other than BART.'' See 40 CFR 51.308(e)(2)(i)(C). The requirements of Section 309 are meant to implement the recommendations of the Grand Canyon Visibility Transport Commission and are regulatory requirements ''other than BART'' that are part of a long-term strategy to achieve reasonable progress. As such, in its analysis, the State may assume emission reductions ''for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.'' See id. The 309 States used this approach in developing their emission benchmark, and we view it to be consistent with what we have previously stated regarding the establishment of a BART benchmark. Specifically, we have explained that States designing alternative programs to meet requirements other than BART ''may use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category.'' 71 FR 60619 (Oct. 13, 2006).

We also previously stated that ''we believe that the presumptions for EGUs in the BART guidelines should be used for comparisons to a trading program or other alternative measure, unless the State determines that such presumptions are not appropriate.'' Id. Our reasoning for this has also long been clear. While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing *regional* emissions reductions for the better than BART demonstration. See 71 FR 60619 (''the presumptions represent a reasonable estimate of a stringent case BART because they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas''). EPA's expectation that scrubber technology would continue to improve and that control costs would continue to decline is a basis for not regarding presumptive limits as a default or safe harbor BART determination when the BART Guidelines otherwise call for a complete, case-by-case analysis. We believe it was reasonable for the developers of the submitted trading program to use the presumptive limits for EGUs in establishing the emission benchmark, particularly since the methodology used to establish the emission benchmark was established near in time to our promulgation of the presumptive limits as well as our guidance that they should be used. We do not think the assumptions used at the time the trading program was developed, including the use of presumptive limits, were unreasonable. Moreover, the commenter has not demonstrated how the use of presumptive limits as a simplifying assumption at that time, or even now, would be flawed merely because EPA expects that scrubber technology and costs will continue to improve.

Comment: The presumptive SO_2 emission rate overstates actual emissions from sources that were included in the BART benchmark calculation. In addition, States in the Grand Canyon Visibility Transport Region have established or proposed significantly more stringent BART limits for SO_2. Using actual SO_2 emission data for EGUs, SO_2 emissions would be 130,601 tpy, not the benchmark of 141,859 tpy submitted in the 309 trading program. Using a combination of actual emissions and unit-specific BART determinations, the SO_2 emissions would be lower still at 123,529 tpy. Finally, the same data EPA relied on to support its determination that reductions under the Cross State Air Pollution Rule are ''better-than-BART'' would translate to SO_2 emissions of 124,740 tpy. These analyses show the BART benchmark is higher than actual SO_2 emissions reductions achievable through BART. It follows that the submitted 309 trading program is flawed because it cannot be deemed to achieve ''greater reasonable progress'' than BART.

Response: The BART benchmark calculation does not overstate emissions because it was not intended to assess actual emissions at BART subject sources nor was it intended to assess the control capabilities of later installed controls. Instead, the presumptive SO_2 emission rate served as a necessary simplifying assumption. When the States worked to develop the 309 trading program, they could not be expected to anticipate the future elements of case-by-case BART determinations made by other States (or EPA, in the case of a BART determination through any federal implementation plan), nor could they be expected to anticipate the details of later-installed SO_2 controls or the future application of enforceable emission limits to those controls. The emissions projections by the WRAP incorporated the best available information at the time from the states, and utilized the appropriate methods and models to provide a prediction of emissions from all source categories in this planning period. In developing a profile of planning period emissions to support each state's reasonable progress goals, as well as the submitted trading program, it was recognized that the final control decisions by all of the states were not yet complete, including decisions as they may pertain to emissions from BART eligible sources. Therefore, we believe it is appropriate that the analysis and demonstration is based on data that was available to the States at the time they worked to construct the SO_2 trading program. The States did make appropriate adjustments based on information that was available to them at the time. Notably, the WRAP appropriately adjusted its use of the presumptive limits in the case of Huntington Units 1 and 2 in Utah, because those units were already subject to federally enforceable SO_2 emission rates that were lower than the

presumptive rate. The use of actual emissions data after the 2006 baseline is not relevant to the demonstration that has been submitted.

Comment: SO_2 emissions under the 309 trading program would be equivalent to the SO_2 emissions if presumptive BART were applied to each BART-subject source. Because the reductions are equivalent, the submitted 309 trading program does not show, by ''the clear weight of the evidence,'' that the alternative measure will result in greater reasonable progress than would be achieved by requiring BART. In view of the reductions being equivalent, it is not proper for EPA to rely on ''non-quantitative factors'' in finding that the SO_2 emissions trading program achieves greater reasonable progress.

Response: We recognize that the 2018 SO_2 milestone equals the BART benchmark and that the benchmark generally utilized the presumptive limits for EGUs, as was deemed appropriate by the States who worked together to develop the trading program. If the SO_2 milestone is exceeded, the trading program will be activated. We note, moreover, that the 2018 milestone constitutes an emissions cap on sulfur dioxide emissions that will persist after 2018.[3] Under this framework, sources that would otherwise be subject to the trading program have incentives to make independent reductions to avoid activation of the trading program. We cannot discount that the 2003 309 SIP submittal may have already influenced sources to upgrade their plants before any case-by-case BART determination under Section 308 may have required it. In addition, the trading program was designed to encourage early reductions by providing extra allocations for sources that made reductions prior to the program trigger year. Permitting authorities that would otherwise permit increases in SO_2 emissions for new sources would be equally conscious of the potential impacts on the achievement of the milestone. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. The 309 trading program is designed as a backstop such that sources would work to accomplish emission reductions through 2018 that would be superior to the milestone and the BART benchmark. If instead the backstop trading program is triggered, the sources subject to the program would be expected to make any reductions necessary to achieve the emission levels consistent with each source's allocation. We do not believe that the ''clear weight of the evidence'' determination referenced in 40 CFR 51.308(e)(2)(E)—in short, a determination that the alternative measure of the 309 trading program achieves greater reasonable progress than BART—should be understood to prohibit setting the SO_2 milestone to equal the BART benchmark. Our determination that the 2018 SO_2 milestone and other design features of the 309 SIP will achieve greater reasonable progress than would be achieved through BART is based on our understanding of how the SIP will promote and sustain emission reductions of SO_2 as measured against a milestone. Sources will be actively mindful of the participating states' emissions inventory and operating to avoid exceeding the milestone, not trying to maximize their emissions to be equivalent to the milestone, as this comment suggests.

Comment: In proposing to find that the SO_2 trading program achieves greater reasonable progress than BART, EPA's reliance on the following features of the 309 trading program is flawed: Non-BART emission reductions, a cap on new growth, and a mass-based cap on emissions. The reliance on non-BART emission reductions is ''a hollow promise'' because there is no evidence that the trading program will be triggered for other particular emission sources, and if the program is never triggered there will be no emission reductions from smaller non-BART sources. The reliance on a cap on future source emissions is also faulty because there is no evidence the trading program will be triggered, and thus the cap may never be implemented. Existing programs that apply to new sources will already ensure that SO_2 emissions from new sources are reduced to the maximum extent. EPA's discussion of the advantages of a mass-based cap is unsupported and cannot be justified. EPA wrongly states that a mass-based cap based on actual emissions is more stringent than BART. There should not be a meaningful gap between actual and allowable emissions under a proper BART determination. A mass-based cap does not effectively limit emissions when operating at lower loads and, as an annual cap, does not have restrictive compliance averaging. EPA's argument implies that BART limits do not apply during startup, shutdown or malfunction events, which is not correct. The established mass-based cap would allow sources to operate their SO_2 controls less efficiently, because some BART-subject EGUs already operate with lower emissions than the presumptive SO_2 emission rate of 0.15 lb/MMBtu and because some EGUs were assumed to be operating at 85% capacity when their capacity factor (and consequently their $S0_2$ emissions in tpy) was lower.

Response: We disagree that it is flawed to assess the benefits found in the distinguishing features of the trading program. The backstop trading program is not specifically designed so that it *will* be activated. Instead sources that are covered by the program are on notice that it will be triggered if the regulatory milestones are not achieved. Therefore, the backstop trading program would be expected to garner reductions to avoid its activation. It also remains true that if the trading program is activated, all sources subject to the program, including smaller non-BART sources would be expected to secure emission reductions as may be necessary to meet their emission allocation under the program

We also disagree that the features of the 2018 milestone as a cap on future source emissions and as a mass-based cap has no significance. As detailed in our proposal, the submitted SIP is consistent with the requirement that the 2018 milestone does indeed continue as an emission cap for SO_2 unless the milestones are replaced by a different program approved by EPA as meeting the BART and reasonable progress requirements under 51.308. Future visibility impairment is prevented by capping emissions growth from those sources not eligible under the BART requirements, BART sources, and from entirely new sources in the region. The benefits of a milestone are therefore functionally distinct from the control efficiency improvements that could be gained at a limited number of BART subject sources. While BART-subject sources may not be operating at 85% capacity today, we believe the WRAP's use of the capacity assumption in consideration of projected future energy demands in 2018 was reasonable for purposes of the submitted demonstration. While BART requires BART subject sources to operate SO_2 controls efficiently, this does not mean that an alternative to BART thereby allows, encourage, or causes sources to operate their controls less efficiently. On the contrary, we find that the SIP, consistent with the well-considered 309 program requirements, functions to the contrary. Sources will be operating their controls in consideration of the milestone and they also remain subject to any other existing or future

[3] The trading program can only be replaced via future SIP revisions submitted for EPA approval that will meet the BART and reasonable progress requirements of 51.308. See 40 CFR 51.309(d)(4)(vi)(A).

requirements for operation of SO_2 controls.

We also disagree with the commenter's contention that existing programs are equivalent in effect to the emissions cap. EPA's new source review programs are designed to permit, not cap, source growth, so long as the national ambient air quality standards and other applicable requirements can be achieved. Moreover, we have not argued that BART does not apply at all times or that emission reductions under the cap are meant to function as emission limitations are made to meet the definition of BART (40 CFR 51.301). The better-than-BART demonstration is not, as the comment would have it, based on issues of compliance averaging or how a BART limit operates in practice at an individual facility. Instead, it is based on whether the submitted SIP follows the regulatory requirements for the demonstration and evidences comparatively superior visibility improvements for the Class I areas it is designed to address.

Comment: The submitted 309 SIP will not achieve greater reasonable progress than would the requirement for BART on individual sources. The BART program ''if adequately implemented'' will promote greater reasonable progress, and EPA should require BART on all eligible air pollution sources in the state. EPA's proposed approval of the 309 trading program is ''particularly problematic'' where the BART sources cause or contribute to impairment at Class I areas which are not on the Uniform Rate of Progress glide-path towards achieving natural conditions. EPA should require revisions to provide for greater SO_2 reductions in the 309 program, or it should require BART reductions on all sources subject to BART for SO_2.

Response: We disagree with the issues discussed in this comment. As discussed in other comments, we have found that the state's SIP submitted under the 309 program will achieve greater reasonable progress than source-by-source BART. As the regulations housed within section 51.309 make clear, States have an opportunity to submit regional haze SIPs that provide an alternative to source-by-source BART requirements. Therefore, the commenter's assertion that we should require BART on all eligible air pollution sources in the state is fundamentally misplaced. The commenter's use of the Uniform Rate of Progress (URP) as a test that should apparently be applied to the adequacy of the 309 trading program as a BART alternative is also misplaced, as there is no requirement in the regional haze rule to do so.

Comment: The 309 trading program must be disapproved because it does not provide for ''steady and continuing emissions reductions through 2018'' as required by 40 CFR 51.309(d)(4)(ii). The program establishes its reductions through milestones that are set at three year intervals. It would be arbitrary and capricious to conclude these reductions are ''steady'' or ''continuous.''

Response: We disagree and find that the reductions required at each milestone demonstrate steady and continuing emissions reductions. The milestones do this by requiring regular decreases. These decreases occur in intervals ranging from one to three years and include administrative evaluation periods with the possibility of downward adjustments of the milestone, if warranted. The interval under which ''steady and continuing emissions reductions through 2018'' must occur is not defined in the regional haze rule. We find the milestone schedule and the remainder of the trading program submitted by City of Albuquerque-Bernalillo County does in fact reasonably provide for ''steady and continuing emissions reductions through 2018.''

Comment: The WRAP attempts to justify the SO_2 trading program because SO_2 emissions have decreased in the three Transport Region states relying on the alternative program by 33% between 1990–2000. The justification fails because the reductions were made prior to the regional haze rule. The reliance on reductions that predate the regional haze rule violates the requirement of 40 CFR 51.308(e)(2)(iv) that BART alternatives provide emission reductions that are ''surplus'' to those resulting from programs implemented to meet other Clean Air Act Requirements.

Response: We did not focus on the WRAP's discussion of early emission reductions in our proposal. However, we do not agree with this comment. The WRAP's statements regarding past air quality improvements are not contrary to the requirement that reductions under a trading program be surplus. Instead, the WRAP was noting that forward-planning sources had already pursued emission reductions that could be partially credited to the design of the 309 SIP. We note that the most recent emission report for the year 2010 shows a 35% reduction in emissions from 2003. Sources that make early reductions prior to the program trigger year may acquire extra allocations should the program be triggered. This is an additional characteristic feature of the backstop trading program that suggests benefits that would be realized even without triggering of the program itself. The surplus emission reduction requirement for the trading program is not in issue, because the existence of surplus reductions is studied against other reductions that are realized ''as of baseline date of the SIP.'' The 1990–2000 period plainly falls earlier than the baseline date of the SIP, so we disagree that the WRAP's discussion of that period was problematic or violative of 40 CFR 51.308(e)(2)(iv), regarding surplus reductions.

Comment: EPA must correct discrepancies between the data presented in the 309 SIP submittals.[4] There are discrepancies in what has been presented as the results of WRAP photochemical modeling. The New Mexico RH SIP proposal by EPA shows, for example, that the 20% worst days at Grand Canyon National Park have visibility impairment of 11.1 deciviews, while the other EPA proposals show 11.3 deciviews. The discrepancy appears to be due to the submittals being based on different modeling scenarios developed by the WRAP. EPA must explain and correct the discrepancies and ''re-notice'' a new proposed rule containing the correct information.

Response: We agree that there are discrepancies in the numbers in Table 1 of the proposal notices. The third column of the table below shows the modeling results presented in Table 1 of the Albuquerque, Wyoming and Utah proposals. The modeling results in the New Mexico proposal Table 1 are shown in the fourth column. The discrepancies come from the State's using different preliminary reasonable progress cases developed by the WRAP. The Wyoming, Utah and Albuquerque proposed notices incorrectly identify the Preliminary Reasonable Progress case as the PRP18b emission inventory instead of correctly identifying the presented data as modeled visibility based on the ''prp18a'' emission inventory. The PRP18a emission inventory is a predicted 2018 emission inventory with all known and expected controls as of March 2007. The preliminary reasonable progress case (''PRP18b'') used by New Mexico is the more updated version produced by the WRAP with all known and expected controls as of March 2009. Thus, we are correcting Table 1, column 5 in the

[4] This particular comment was not submitted in response to the proposal to approve Albuquerque's 309 trading program, the earliest published proposal. It was consistently submitted in the comment periods for the proposals to approve the 309 trading programs for NM, WY and UT, which were later in time.

Wyoming, Utah and Albuquerque of our proposed notices to include model results from the PRP18b emission inventory, consistent with the New Mexico proposed notice and the fourth column in the table below. We are also correcting the description of the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) to reflect that this emission inventory includes all controls ''on the books'' as of March 2009.

Class I area	State	2018 Preliminary reasonable progress PRP18a case (deciview)	2018 Preliminary reasonable progress PRP18b case (deciview)
Grand Canyon National Park	AZ	11.3	11.1
Mount Baldy Wilderness	AZ	11.4	11.5
Petrified Forest National Park	AZ	12.9	12.8
Sycamore Canyon Wilderness	AZ	15.1	15.0
Black Canyon of the Gunnison National Park Wilderness	CO	9.9	9.8
Flat Tops Wilderness	CO	9.0	9.0
Maroon Bells Wilderness	CO	9.0	9.0
Mesa Verde National Park	CO	12.6	12.5
Weminuche Wilderness	CO	9.9	9.8
West Elk Wilderness	CO	9.0	9.0
San Pedro Parks Wilderness	NM	9.8	9.8
Arches National Park	UT	10.9	10.7
Bryce Canyon National Park	UT	11.2	11.1
Canyonlands National Park	UT	10.9	10.7
Capitol Reef National Park	UT	10.5	10.4
Zion National Park	UT	13.0	12.8

Section 309 requires Transport Region States to include a projection of the improvement in visibility expected through the year 2018 for the most impaired and least impaired days for each of the 16 Class I areas on the Colorado Plateau. 40 CFR 51.309(d)(2). As explained in the preamble to the 1999 regional haze regulations, EPA included this requirement to ensure that the public would be informed on the relationship between chosen emissions control measures and their effect on visibility. 64 FR at 35751. Given the purpose of this requirement, we do not consider the discrepancies noted above to be significant and are not re-noticing our proposed rulemaking as the discrepancies do not change our proposed conclusion that SIP submitted by City of Albuquerque—Bernalillo County contains reasonable projections of the visibility improvements expected at the 16 Class I areas at issue. The PRP18a modeling results show projected visibility improvement for the 20 percent worst days from the baseline period to 2018. The PRP18b modeling results show either the same or additional visibility improvement on the 20 percent worst days beyond the PRP18a modeling results. We also note there are two discrepancies in New Mexico's Table 1, column four compared to the other participating States' notices. The 2018 base case visibility projection in the New Mexico proposed notice for Black Canyon of the Gunnison National Park Wilderness and Weminuche Wilderness should be corrected to read 10.1 deciview rather than 10.0. Notwithstanding the discrepancies described above, we believe that the BC SIP adequately projects the improvement in visibility for purposes of Section 309.

B. Additional Comments

Comment: The regional haze regulations at 40 CFR 51.308(e)(2)(i)(B) require that ''each BART-eligible source in the State must be subject to the requirements of the alternative program, [and] have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART * * *'' The sole coal-fired electric generating units (''EGUs'') that are subject to BART in New Mexico are the four units at the San Juan Generating Station (''SJGS''). While the BC RH SIP lists SJGS as a BART eligible source, it fails to identify a federally enforceable emission limitation for SO_2 that is determined to be BART by the State and has been approved by EPA as meeting BART. As such, the BC RH SIP fails to comply with 40 CFR 51.308(e)(2)(i)(B).

Response: This comment presents a flawed reading of our regulations by inserting the word ''and'' where it does not, in fact, appear in the language of 40 CFR 51.308(e)(2)(i)(B). 40 CFR 51.308(e)(2)(i)(B) requires that ''each BART-eligible source in the State must be subject to the requirements of the alternative program, have a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with section 302(c) or paragraph (e)(1) of this section, or otherwise addressed under paragraphs (e)(1) or (e)(4) of this section.'' This section of the rule requires that each BART-eligible source be covered by the alternative program or satisfy the BART requirements by either participation in a ''Transport Rule Federal Implementation Plan'' under paragraph (e)(4) or by determining BART for the source under paragraph (e)(1). Because there are no BART-eligible sources in Bernalillo County, the requirement to make BART determinations does not apply. As was detailed in the proposal, the alternative program satisfies the requirements of 40 CFR 51.308(e)(2)(i)(B), because all BART-eligible sources are covered by the alternative program. We also note the alternative program goes further to additionally cover point sources that have actual emissions of SO_2 greater than 100 tons per year (sources meeting the requirements of 20.2.81.101. NMAC).

Comment: The BC RH SIP also fails to comply with 40 CFR 51.309(g), which requires that SIPs address impacts to Class I areas not located on the Colorado plateau. 40 CFR 51.309(g). States are required to submit air quality modeling or other reliable evidence revealing visibility impacts and establishing that reasonable progress goals will be met. In December 2010 and February 2011, EPA informed Bernalillo County that its SIP failed to comply with 40 CFR 51.309(g)(1) and (2) because it did not submit evidence showing Bernalillo

County's effects on visibility in Class I areas in New Mexico, such as Gila Wilderness and Carlsbad Cavern. EPA Docket EPA–R06–OAR–2008–0702–0011 at pages 110–111 and 126–127. EPA determined that SO_2 emissions in New Mexico were projected to increase from 4,966 tpy in 2002 to 14,073 tpy by 2018 with nearly 30% of the 2018 emissions coming from Bernalillo County. Id. EPA also determined that a significant increase in NO_X emissions from Bernalillo County was projected to occur over this same time period. Id. EPA asked Bernalillo County to conduct visibility modeling to determine its impacts to Class I areas and to explain how reasonable progress goals would be met in light of significant emissions increases. Id.

The commenters state that they were unable to identify any visibility modeling or other analysis conducted by Bernalillo County to address EPA's concerns. The commenters request an opportunity to review any visibility modeling or related analysis and that EPA reject the BC RH SIP until these issues are fully addressed.

Response: The letters referred to by the commenter state that the analysis with regard to the requirements of 40 CFR 51.309(g)(1) and (2) in BC's draft SIP revision shared with EPA in 2010 may be incomplete. Specifically, the qualitative analysis provided in ''Appendix 2007–H'' and ''Addendum to Appendix 2007–H'' addressed the impact of BC's emissions on nearby Class I areas, but did not include information on the inaccuracy and over-prediction in the 2018 WRAP emission projections for NO_X and SO_2 emissions in BC, or the effect of an accurate emission inventory with respect to modeled visibility degradation at Gila Wilderness and Carlsbad Caverns.

With respect to the above mentioned modeled degradation at Gila Wilderness, an error in data retrieval affected initial results for modeled visibility conditions at Gila Wilderness in 2002 and indicated that visibility would degrade from 2002 to 2018. This error was corrected and the updated submitted data indicates a predicted improvement in visibility conditions on the 20% worst days and no degradation of visibility on the 20% best days.[5] For Carlsbad Caverns, NMED provided modeling data that demonstrates that significant projected growth in emissions by 2018 from Mexico are responsible for the degradation in visibility conditions on the 20% best days at this Class I area (Section 11.3.3 of the NM RH 309(g) SIP submittal). WRAP visibility modeling results with Mexico emissions held constant from 2002 to 2018 show a slight improvement in visibility conditions at Carlsbad Caverns on the 20% best days. Therefore, the initial modeled visibility degradation at both Gila Wilderness and Carlsbad Caverns was addressed without a need to further evaluate the impact of over-estimated NO_X and SO_2 emissions in BC.

Furthermore, BC provided additional information in Appendix 2010–B of the BC RH SIP [6] that included an evaluation of emission inventory trends for 2002, 2005, and 2008 for NO_X and SO_2 emissions for Bernalillo County. The analysis in the BC RH SIP submittal identifies some inaccuracies in the emission inventories used by the WRAP to model the 2002 baseline and the 2018 future case. The 2002 and 2018 emission projections are higher than expected when compared to the reduction in SO_2 emissions observed in the actual emissions inventories for 2002, 2005 and 2008. Table 5 of our proposed approval of the BC RH SIP (77 FR 24790) shows a comparison of emission data from Bernalillo County and a trend of decreasing emissions compared to emissions included in the WRAP estimates and photochemical modeling, projecting a large increase of both NOx and SO_2. Based on the information provided in BC RH SIP submittal, we agree with the determination that visibility impacts at the nearby Class I areas due to area and mobile emission sources in Bernalillo County are overestimated in the WRAP 2002 and 2018 visibility modeling. The emission trends for 2002 through 2008 (BC RH SIP submittal Appendix 2010–B) indicate that emissions of NO_X and SO_2 within Bernalillo County are declining and therefore visibility impairment due to these emissions are also anticipated to decrease from their current low levels presented in Appendix 2007–H and in the addendum to Appendix 2007–H of the BC RH SIP. We find that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined and demonstrated that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county. The BC RH SIP submittal therefore complies with 40 CFR 51.309(g)(1) and (2).

Comment: Section 51.308(d)(1)(vi) states, ''[t]he State may not adopt a reasonable progress goal that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period. 40 CFR 51.308(d)(1)(vi). Since the BC RH SIP's reasonable progress goals would result in less visibility improvement than would be achieved through application of BART, the BC RH SIP's reasonable progress goals must be revised to reflect reductions achievable through BART.

Response: There are no Class I areas within Bernalillo County, therefore BC is not required to nor did they adopt reasonable progress goals for any Class I area. BC is required to address the apportionment of visibility impact from the emissions generated by sources within Bernalillo County at Class I areas outside of the county borders. As discussed above, we find that BC adequately evaluated the Class I areas that may be impacted by sources of air pollution within Bernalillo County and BC adequately determined and demonstrated that, at this time, it is improbable that sources located within the county cause or contribute to visibility impairment in a Class I area located outside of the county.

In addition, no sources in Bernalillo County satisfy the definition for BART-eligible sources at 40 CFR 51.301. Therefore, no visibility improvement is anticipated due to the application of BART within Bernalillo County. We note, that BC is participating in the SO_2 emission milestone and backstop trading program. This program applies to all SO_2 point sources over 100 tons per year and requires that emissions in the participating States and BC remain below the established milestone or result in the triggering of the 309 backstop trading program. The milestone caps these sources at actual emissions, and the program also provides for a cap on new source growth. The milestone schedule and the trading program submitted by BC and the participating states provide for steady and continuing emissions reductions through 2018.

V. 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

[5] Correction of WRAP region Plan02d CMAQ visibility modeling results on TSS for Regional Haze Planning—Final Memorandum, June 30, 2011, available at: *http://vista.cira.colostate.edu/tss/help/plan02d_rev.pdf.*

[6] AQD exhibit#5 EPA Docket EPA–R06–OAR–2008–0702–0013 beginning at page 227.

the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2013. 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 dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Regional haze, Best available control technology, Interstate transport of pollution, Visibility.

Dated: November 13, 2012.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended:

■ a. In paragraph (c), under the second table entitled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' by revising the entry for part 21 (20.11.21 NMAC), Open Burning and adding an entry in sequential order for ''Part 46 (20.11.46 NMAC)''.

■ b. In paragraph (e), under the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in The New Mexico SIP'' by adding new entries to the end of the table for ''Interstate transport for the 1997 ozone and $PM_{2.5}$ NAAQS'' and ''Regional Haze SIP under 40 CFR 51.309''.

The amendments 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 21 (20.11.21 NMAC).	Open Burning	7/11/2011	11/29/12 and FR page number where document begins].	
*	* * *	*	* *	*
Part 46 (20.11.46 NMAC).	Sulfur Dioxide Emission Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program.	5/16/2011	11/29/12 and 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
*	* *	*	* *	*
Interstate transport for the 1997 ozone and $PM_{2.5}$ NAAQS.	Bernalillo County	7/30/2007	11/29/12 and FR page number where document begins].	Revisions to prohibit interference with measures required to protect visibility in any other State. Revisions to prohibit contribution to nonattainment in any other State approved 11/8/2010 (75 FR 68447).
Regional Haze SIP under 40 CFR 51.309.	Bernalillo County	7/28/2011	11/29/12 and FR page number where document begins].	

[FR Doc. 2012–28822 Filed 11–28–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0252; FRL–9737–1]

Revisions to the California State Implementation Plan, San Joaquin Valley United Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the SJVUAPCD and SCAQMD portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 21, 2012 and concerns volatile organic compound (VOC) emissions from chipping and grinding activities, and composting operations. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules will be effective on December 31, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0252 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (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: Robert Marinaro, EPA Region IX, (415) 972–3019, *marinaro.robert@epa.gov.*

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

Table of Contents

I. Proposed Action

On June 21, 2012 (77 FR 37359), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1133.1	Chipping and Grinding Activities	07/08/11	11/18/11
SCAQMD	1133.3	Emission Reductions from Greenwaste Composting Operations.	07/08/11	11/18/11
SJVUAPCD	4566	Organic Material Composting Operations	8/18/11	11/18/11

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received two comments from the following parties.

1. Dan Noble and Paul Ryan, Association of Compost Producers and Inland Empire Disposal Association (ACP/IEDA); letter dated July 23, 2012 and received July 23, 2012.

2. Caroll Mortensen, Department of Resources Recycling and Recovery (CalRecycle); letter dated July 14, 2012 and received July 17, 2012.

The comments and our responses are summarized below.

Comment #1: ACP/IEDA recommend that prior to the development of food waste emission factors for composting, that harmonized, consistent, and uniform food waste definitions be developed and implemented in regulations across air quality, water quality, and integrated waste management agencies in the State of California.

Response #1: This comment does not address the basis or conclusion of EPA's proposed action. However, EPA supports the current efforts of CalRecycle and the California State Water Resources Control Board to define ''food waste'' in a consistent manner to reduce inconsistencies between various state permitting and regulatory programs. More information can be found at *http://www.calrecycle.ca.gov/laws/Rulemaking/Compost/default.htm.*

Comment #2: ACP/IEDA recommend that federal, State, and local agencies develop and incorporate standard food waste emission factors in rules and regulations to more accurately characterize both reactive and non-reactive ozone forming volatile organic compound (VOC) emissions from greenwaste composting that contains food material.

Response #2: No response is needed as the comment does not address the basis or conclusion of EPA's proposed action. However, we believe that additional research that would better characterize VOC emissions from food waste would be helpful.

Comment #3: In general, ACP/IEDA supports the EPA recommendations to further improve both SCAQMD and SJVUAPCD rules.

Response #3: No response needed.

Comment #4: CalRecycle, in general, supports EPA's proposed action on the SCAQMD and SJVUAPCD composting rules.

Response #4: No response needed.

Comment #5: CalRecycle requests that EPA allow and direct air quality regulators to provide more flexibility when considering new regulations on low-reactivity sources of VOCs, such as composting, especially when those sources have other environmental benefits. CalRecycle explains this recommendation further and includes citation to a supportive UC Davis study.

Response #5: This comment does not address the basis or conclusion of EPA's proposed action. However, we agree that well-managed composting may provide environmental benefits, including diverting material from landfills that could produce methane.[1] Using compost can also help regenerate poor soils, clean up contaminated soils, and prevent erosion and silting on embankments parallel to creeks, lakes and rivers. Using compost can also reduce the need for fertilizer and pesticides.

We also note that EPA's interim guidance on the controls of VOC in ozone state implementation plans (70 FR 54046, September 13, 2005) already encourages states with persistent ozone nonattainment problems to consider recent scientific information on VOC reactivity and how it may be incorporated into the development of ozone control measures. EPA also believes that mass-based VOC regulations continue to provide significant ozone reduction benefits and should not be discounted unless and until they are replaced by programs that achieve the same or greater benefits.

Comment #6: CalRecycle recommends that the EPA clarify and support the creation of offsets for the implementation of mitigation measures, such as aerated static piles and anaerobic digesters, that may reduce VOCs beyond what is required by existing rules.

Response #6: This comment does not address the basis or conclusion of EPA's proposed action. However, EPA is working with our state and local partners to ensure that Clean Air Act permitting requirements, including offset requirements, are appropriately applied to the composting industry.

Comment #7: CalRecycle requests that EPA consider VOC reactivity when evaluating and updating ozone emission inventories.

Response #7: The comment does not address the basis or conclusion of EPA's proposed action. Also see the response to Comment #5.

Comment #8: CalRecycle recommends that the EPA support research to test emissions from green materials directly applied to farmland. It considers direct land application to be a likely outlet for organic materials if composting is restricted or made more expensive by air quality rules. The commenter notes that CalRecycle and the UC Davis School of Civil and Environmental Engineering submitted a research proposal for this concept to EPA in 2011.

Response #8: The comment does not address the basis or conclusion of EPA's proposed action. However, EPA believes that additional research would be helpful. We think it is important to better quantify the environmental impacts of composting, especially VOC emission factors related to food waste. We also think it is important to better quantify the environmental benefits of composting, including being able to better describe how VOC emissions from composting compare with VOC emissions of other management options, such as direct application to land or landfilling. EPA does not have research funding readily available for these purposes, but we can participate in discussions with organizations that may have funding to help prioritize research needs.

Comment #9: CalRecycle recommends that the EPA support research to quantify water savings associated with compost use.

Response #9: The comment does not address the basis or conclusion of EPA's proposed action. However, as stated in

[1] Reducing Greenhouse Gas Emissions through Recycling and Composting, U.S. EPA Region 10, May 2011, *http://www.epa.gov/region10/pdf/climate/wccmmf/Reducing_GHGs_through_Recycling_and_Composting.pdf.*

our response to comment #8, we encourage research that would allow better quantification of the environmental benefits of composting.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California 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. 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(416)(i)(A)(*2*) and (i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(416) * * *

(i) * * *

(A) * * *

(*2*) Rule 4566, ''Organic Material Composting Operations,'' adopted on August 18, 2011.

(B) South Coast Air Quality Management District.

(*1*) Rule 1133.1, ''Chipping and Grinding Activities,'' amended on July 8, 2011.

(*2*) Rule 1133.3, ''Emission Reductions from Greenwaste Composting Operations,'' adopted on July 8, 2011.

* * * * *

[FR Doc. 2012–28827 Filed 11–28–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[CG Docket No. 12–129; FCC 12–129]

Implementation of the Middle Class Tax Relief and Job Creation Act of 2012; Establishment of a Public Safety Answering Point Do-Not-Call Registry

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to create a Do-Not-Call registry for public safety answering points (PSAPs) as required by the ''Middle Class Tax Relief and Job Creation Act of 2012'' (Tax Relief Act). Specifically, section 6507 of the Tax Relief Act requires the Commission, among other things, to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibit the use of automatic dialing equipment to contact those numbers. Therefore, the Commission adopts rules necessary for the creation and ongoing management of the Do-Not-Call registry, including requirements for

adding PSAP telephone numbers, granting and tracking access by operators of automatic dialing equipment, and protecting the registry from unauthorized disclosure or dissemination of registered numbers. In addition, the Commission adopts specific monetary penalties for unauthorized disclosure or contact of any numbers on the PSAP registry. These provisions are designed to address concerns about the use automatic dialing equipment which can generate large numbers of phone calls in a short period of time, tie up public safety lines, divert critical responder resources away from emergency services, and impede access by the public to emergency lines.

DATES: This final rule contains new information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date of that rule section.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Policy Division, at (717) 338–2797 (voice), or email *Richard.Smith@fcc.gov.*

For additional information concerning the Paperwork Reduction Act (PRA) new information collection requirements contained in document FCC 12–129, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov* and *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 12–129, adopted on October 17, 2012, and released on October 17, 2012, in CG Docket No. 12–129. Document FCC 12–129 and the rules adopted therein shall become effective no less than six months after publication of a Public Notice in the **Federal Register** announcing the effective date of the rules once the PSAP Do-Not-Call registry becomes operational and by which affected parties must begin compliance. The full text of document FCC 12–129 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* This document can also be downloaded in Word or Portable Document Format (''PDF'') at *http://www.fcc.gov/document/fcc-initiates-proceeding-create-public-safety-do-not-call-registry.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Congressional Review Act

The Commission will send a copy of document FCC 12–129 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction of 1995 Analysis

Document FCC 12–129 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 12–129 as required by the PRA of 1995, Public Law 104–13 in a separate notice that will be published in the **Federal Register**. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In document FCC 12–129, the Commission has assessed the potential effects of the policy changes with regard to information collection burdens on small business concerns, and finds these requirements will implement the statutory mandate to create a PSAP do-not-call registry and prohibit the use of autodialers to contact those numbers in a way that minimizes regulatory compliance burdens. In addition, the Commission has described the impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

The rules adopted in document FCC 12–129 establish recordkeeping requirements for a large variety of entities, including small business entities. First, each PSAP may designate a representative who shall be required to file a certification with the administrator of the PSAP registry that they are authorized to place numbers onto that registry. The designated PSAP representative shall provide contact information including the PSAP represented, name, title, address, telephone number and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone associated with the provision of emergency services or communications with other public safety agencies. On an annual basis, designated PSAP representatives shall access the registry, review their numbers and remove any ineligible numbers from the registry. Second, an operator of automatic dialing equipment (OADE) is prohibited from contacting any number on the PSAP registry. Each OADE must register for access to the PSAP registry by providing contact information which includes name, business address, contact person, telephone number, email, and all outbound telephone numbers used to place autodialed calls. All such contact information must be updated within 30 days of any change. In addition, the OADE must certify that it is accessing the registry solely to prevent autodialed calls to numbers on the registry. An OADE must access and employ a version of the PSAP registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and maintain record documenting this process. No person or entity may sell, rent, lease, purchase, share, or use the PSAP registry for any purpose expect to comply with our rules prohibiting contact with numbers on the registry. In order to ensure that all interested parties will be provided with reasonable notice once the PSAP registry becomes operational, the rules adopted herein will not become effective until a Public Notice is published which sets an effective date of no less than six months after publication of the Public Notice.

Synopsis

Establishment of a PSAP Do-Not-Call Registry

1. *Numbers and Registration.* The Commission concludes that PSAPs should be given substantial discretion to designate the numbers to include on the PSAP Do-Not-Call registry so long as such numbers are associated with the provision of emergency services or communications with other public safety agencies. These numbers may include, for example, numbers associated with administrative lines that may be used in some cases for overflow

emergency calls. In addition, the Commission concludes that secondary PSAPs should also be permitted to place numbers on the registry, because, as the record shows, secondary PSAPs are vulnerable to autodialed calls in the same way as primary PSAPs.

2. Section 6507(b)(1) of the Tax Relief Act states that ''verified [PSAP] administrators or managers'' will be permitted to add numbers to the registry. The Commission concludes that PSAPs may designate a representative who shall be required to file with the Commission or the designated administrator of the registry a certification, under penalty of law, that he/she is authorized and eligible to add numbers to the registry on behalf of that PSAP. As part of that certification, the representative shall provide contact information, including the PSAP name, contact person, title, address, telephone number, and email address. The Commission or administrator of the PSAP registry may require a follow-up response from a valid PSAP email address or some other means of confirmation to be specified by the Commission or administrator of the registry. Each verified PSAP shall then be assigned a unique identification number or password which shall be required to be entered every time the PSAP requests that numbers be placed onto the registry. The Commission emphasizes that only PSAP numbers submitted by a verified PSAP shall be allowed on the registry and shall remain on the registry until such numbers are removed by the PSAP or it is determined during the statutorily-required verification process that such numbers are no longer eligible for inclusion.

3. *Verification that numbers should remain on the registry.* Section 6507(b)(2) of the Tax Relief Act requires that the Commission ''provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry.'' The Commission concludes that, to give PSAPs flexibility and promote accuracy of the registry, PSAPs should be permitted to remove numbers from the registry at any time. In order to minimize PSAPs' compliance burdens while ensuring an accurate registry, we require that PSAPs access and review their registered numbers on an annual basis. To aid PSAPs in this process, the Commission directs the designated administrator of the registry to send an annual notification to each PSAP that has placed numbers on the registry reminding PSAPs of their continuing obligation to verify their registered numbers. PSAP representatives may request removal of numbers by providing the unique identification number or password assigned to the PSAP for purposes of placing numbers onto the registry.

Granting and Tracking Access to the Registry by Operators of Automatic Dialing Equipment

4. Section 6507(b)(3) of the Tax Relief Act requires the Commission to ''provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment.'' Consistent with this statutory mandate, the Commission finds that registry access should be restricted to OADEs for the limited purpose of ensuring compliance with the prohibition on contacting PSAP numbers in the registry. The only information that OADEs need to comply with section 6507 of the Tax Relief Act is the list of registered telephone numbers. The Commission concludes that any person or entity who uses an ''automatic telephone dialing system,'' as defined in section 227(a)(1) of the Communications Act, to make calls qualifies as an operator of ''automatic dialing'' or ''robocall'' equipment for purposes of the Tax Relief Act.

5. The Commission require that any OADE that accesses the PSAP registry provide to the Commission or the designated administrator of the registry a certification, under penalty of law, that it is accessing the registry solely to determine whether any telephone numbers to which it intends to place autodialed calls are listed on such registry for the purpose of complying with section 6507 of the Tax Relief Act. The first time an OADE accesses the registry, the OADE will be required to establish a profile and provide identifying information about its organization that will include the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number, the OADE's email address, and all telephone numbers used to place autodialed calls, including both originating numbers and numbers that are displayed on caller ID.

6. The Commission requires that all such contact information be updated within 30 days of the date on which any change occurs. The Commission or administrator will assign every OADE granted access to the PSAP registry a unique identification number or password, which must be submitted each time that database is accessed. The Commission or the administrator will use this unique identifier to grant and track access to the secure database of registered PSAP numbers.

7. In the PSAP Do-Not-Call NPRM, the Commission sought comment on how often OADEs should be required to access the registry of PSAP numbers and update their calling lists to avoid calling registered PSAP numbers. The Commission noted that the TCPA rules require telemarketers to ''employ a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintain records documenting this process.'' The Commission adopts this proposed timeframe for accessing the PSAP registry. The Commission retains the flexibility to revisit this finding and delegate authority to the Consumer and Governmental Affairs Bureau to modify this requirement as necessary.

Protecting the Registry From Unauthorized Disclosure or Dissemination

8. Section 6507(b)(4) of the Tax Relief Act requires the Commission to ''protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry.'' The Commission adopts a rule that prohibits parties from selling, renting, leasing, purchasing, sharing, or using the PSAP registry, or any part thereof, for any purpose except compliance with this section and any state or Federal law enacted to prevent autodialed calls to telephone numbers in the registry. The Commission limits access to the registry to OADEs and require that each OADE certify, under penalty of law, that it will access the registry solely to prevent autodialed calls to numbers on the registry.

9. *Limiting registry access to OADEs.* Some OADEs are marketers that make autodialed calls on behalf of other entities, *e.g.,* the sellers of products, goods, or services. Section 6507(b)(3) of the Tax Relief Act requires the Commission to ''provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment,'' but does not contemplate access by such third parties who are not OADEs. In light of the statute's goal of protecting registered PSAP numbers, the Commission finds that access to the registered numbers should be limited to OADEs that have complied with the authorized process to obtain access to that information.

Prohibiting the Use of Automatic Dialing or ''Robocall'' Equipment To Contact Registered PSAP Numbers

10. Section 6507(b)(5) of the Tax Relief Act directs the Commission to

issue regulations prohibiting ''the use of automatic dialing or 'robocall' equipment to establish contact with registered numbers.'' The Commission prohibits OADEs from contacting any PSAP number on the PSAP Do-Not-Call registry other than for an emergency purpose. Further, the Commission agrees with commenters who support its proposal that the prohibition should include the use of an autodialer to make text message calls in addition to voice calls to numbers on the PSAP registry.

11. *Use of autodialers for emergency calls.* Commenters note that government-operated emergency notification systems and specialized personal emergency response services use automated dialing systems to route calls to the appropriate PSAP when a need for public safety services has been verified. These systems are used by government and personal emergency response entities to convey emergency information, for example, the location of an automobile accident. The record confirms that these emergency calls have contributed to significant improvements in public safety as well as in emergency response efforts, and the Commission therefore believes they should be exempted from the prohibition on autodialer-initiated calls to PSAP numbers.

12. The Commission agrees with commenters that these emergency calls should not be prohibited under our new rules and note that no commenter opposes this conclusion. Section 6507(b)(5) of the Tax Relief Act requires the Commission to establish rules prohibiting autodialed calls to registered PSAP numbers. In contrast to analogous sections of the TCPA, however, the Tax Relief Act does not prohibit such autodialed calls directly. Instead, the Tax Relief Act gives the Commission discretion to define the precise scope of the prohibition. In defining the scope, the Commission is informed by public safety objectives underlying section 6507 of the Tax Relief Act. In addition, section 6003 of the Tax Relief Act directs the Commission to implement and enforce section 6507 of the Tax Relief Act as though it were part of the Communications Act. Therefore, the Commission interpretation is also informed by the principles of the Communications Act, which includes promoting ''the safety of life and property through the use of wire and radio communication services.'' Moreover, the Commission believes it is consistent with the intent of section 6507 of the Tax Relief Act and in the public interest to recognize an exception for autodialed emergency purpose calls which promote public safety. Stated differently, the Commission believes that banning autodialed emergency calls to PSAPs would be inconsistent with section 6507 of the Tax Relief Act's goal of improving PSAPs' ability to respond to emergencies.

13. For purposes of the PSAP registry, the Commission adopts the existing definition in its rules, as set forth in the TCPA context, and defines an ''emergency purpose'' as a ''call made necessary in any situation affecting the health or safety of consumers.''

14. *Definitions.* As noted above, the Tax Relief Act does not define ''automatic dialing'' or ''robocall'' equipment. The Commission believes, however, that these terms are equivalent to ''automatic telephone dialing system'' as defined in the TCPA and commonly referred to as ''robocalling'' equipment. Specifically, the TCPA defines ''automatic telephone dialing system'' as equipment ''which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.'' The Commission has emphasized that this definition covers any equipment that has the specified capacity to generate numbers and dial them without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from a calling list. The Commission adopts the TCPA's definition of automatic telephone dialing system and the Commission's relevant interpretations of that term, for purposes of defining ''automatic dialing'' and ''robocall'' equipment as used in the Tax Relief Act.

Enforcement

15. *Monetary penalties.* Section 6507(c) of the Tax Relief Act directs the Commission to establish specific monetary penalties for disclosure or dissemination of registered numbers by parties granted access to the registry and for the use of automatic dialing or ''robocall'' equipment to establish contact with registered numbers. For disclosure or dissemination of registered numbers, section 6507(c)(1) of the Tax Relief Act requires the Commission to establish monetary penalties that are ''not less than $100,000 per incident nor more than $1,000,000 per incident.'' For use of automatic dialing equipment to contact numbers on the registry, section 6507(c)(2) of the Tax Relief Act requires the Commission to establish monetary penalties that are ''not less than $10,000 per call nor more than $100,000 per call.'' Because Congress has specifically prescribed the monetary penalties associated with violations of section 6507 of the Tax Relief Act and related regulations, the Commission codifies these penalties in its rules. Therefore, the Commission amends § 1.80 of the Commission's rules governing forfeiture proceedings and forfeiture amounts to incorporate these prescribed amounts.

16. Section 6507(c)(3) of the Tax Relief Act requires the Commission to set amounts within these ranges depending ''upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence.'' Because the Tax Relief Act does not define these terms, the Commission finds it reasonable, to the extent that the it has defined such terms in an enforcement context, to use those definitions for purposes of the Tax Relief Act. For example, section 503(b)(1) of the Communications Act authorizes the Commission to impose forfeitures for ''willful'' violations. Section 312(f)(1) of the Communications Act defines ''willful'' as the ''conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate'' the law. The legislative history to section 312(f)(1) of the Communications Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Communications Act, and the Commission has so interpreted the term in the section 503(b) context. In addition, section 503(b)(2)(E) of the Communications Act and § 1.80(b)(6) of the Commission's rules set forth the factors to be considered when determining the amount of forfeiture penalties. Specifically, these provisions require that the Commission ''take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.'' The Commission believes these provisions are broad enough to encompass the factors necessary to distinguish between negligent, grossly negligent, reckless or willful conduct, as used in the Tax Relief Act, without the need for further clarification on this point in its rules. The Commission will determine the nature of the violation on a case-by-case basis, consistent with Commission precedent.

17. *Process for imposing monetary penalties.* The Commission concludes that section 6507(c) of the Tax Relief Act is ambiguous on the question of whether the Commission must issue a citation to a non-regulatee violator before it may impose a monetary forfeiture for violation of section 6507 of the Tax Relief Act. On one hand, section

6003 of the Tax Relief Act indicates that the enforcement provisions in Title V of the Communications Act, which include a citation requirement in some instances, should generally be applied in addressing violations of section 6507. At the same time, though, section 6507 of the Tax Relief Act addresses the appropriate monetary penalty for a first offence, which does not appear to contemplate the issuance of a citation. In light of this ambiguity, the Commission look to the legislative history and policies underlying the citation requirement and conclude that the most reasonable construction of these statutory provisions is to interpret section 6507(c)(3)'s ''first offence'' language to apply only where section 503 of the Communications Act permits a monetary penalty for a first offence (*i.e.,* where the violator is a Commission regulatee). As the Commission previously has concluded, ''the legislative history indicates that the initial warning approach of section 503(b)(5) of the Communications Act was included in the amendments to protect those persons who might not reasonably know they were engaging in an activity regulated by the Commission.'' The Commission note that entities subject to enforcement for violations of the PSAP Do-Not-Call requirements include not only those entities governed by comparable Do-Not-Call requirements under the TCPA (which is also enforced subject to section 503(b)(5) of the Communications Act's citation requirement), but also other entities not subject to those regulations. In the case of violations of the PSAP Do-Not-Call requirements by a non-regulatee, the Commission therefore concludes that the section 503 of the Communications Act citation requirement applies. The Commission note, however, that the prior issuance of such a citation can be used as a basis both for imposing a higher penalty for subsequent offences and for imposing a forfeiture for the earlier violation at the same time. The Commission base the latter conclusion on the legislative history of section 503 of the Communications Act, which indicates that once an entity has received a citation, ''if he or she thereafter engaged in the conduct for which the citation of violation was sent [] a notice of liability [could] be issued. In such an event, forfeiture liability would attach not only for the conduct occurring subsequently but also for the conduct for which the citation of violation was originally sent.'' Thus, although there may be some instances, such as when the statute of limitations on the first violation has run, where the forfeiture may only be issued as to the subsequent violations, that will not always be the case. In those cases where the statute of limitations has expired, the Commission may nevertheless consider the first offence to support imposition of a higher monetary penalty for subsequent offences by a non-regulatee. As commenters suggest, the Commission believes that this interpretation will provide non-regulatees that may be less familiar with its rules with an opportunity to take corrective action before imposition of substantial monetary penalties required under section 6507(c) of the Tax Relief Act, while still taking first offences into consideration in imposing monetary penalties for subsequent violations.

18. *Safe Harbor.* The Commission concludes that numbers on the PSAP registry require a higher level of protection from unlawful automated calls than the residential telephone numbers on the National DNC registry. In addition, section 6507(c)(3) of the Tax Relief Act contemplates monetary penalties even for negligent conduct. Therefore, the Commission declines to adopt a safe harbor from our prohibition on using autodialers to contact registered PSAP numbers. As discussed above, OADEs are required to access the registry of PSAP numbers and update their calling lists to delete registered PSAP numbers no later than every 31 days. Therefore, any numbers added to the registry in the 31 day period following such a required update will not be subject to a violation of these rules because they will not be reflected in the OADE's download of the PSAP registry until the next required update.

Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (PSAP Do-Not-Call NPRM) released by the Commission on May 22, 2012. The Commission sought written public comments on the proposals contained in the PSAP Do-Not-Call NPRM, including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order

20. The ''Middle Class Tax Relief and Job Creation Act of 2012'' requires the Commission to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibits the use of automatic dialing or ''robocall'' equipment to contact those numbers. This requirement is designed to address concerns about the use of autodialers, which can generate large numbers of phone calls, tie up public safety lines, and divert critical responder resources away from emergency services. Document FCC 12–129 adopts rules to implement this statutory requirement as set forth in section 6507 of Tax Relief Act.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. No comments were raised directly in response to the IRFA. Some commenters, however, raised issues concerning the impact of the proposed rules on small entities.

22. *PSAPs.* Commenters representing public safety and PSAPs request that the Commission design flexible requirements to minimize compliance burdens on such entities when compiling and submitting numbers onto the PSAP registry. The Commission has complied with this request by formulating flexible requirements which allow the PSAP to designate a person of their own choosing to submit numbers onto the registry. This designated representative will be required to provide certain basic contact information and be subject to verification by the Commission or the administrator of the registry. The Commission believes this requirement imposes minimal burdens while taking measures to ensure that only verified PSAP numbers are downloaded onto the PSAP registry. In addition, some commenters request that PSAPs only be required to access and verify the numbers contained on the registry each seven years. However, the Commission believes that it is necessary for a more frequent review to occur to ensure the ongoing accuracy of the registry. Therefore, the Commission requires that this review take place on an annual basis. To aid PSAPs in the process, they will be sent an annual reminder.

23. *Autodialer Operators.* Several commenters suggest that the Commission formulate its rules relating to the PSAP registry along the same lines as those applicable to the National Do-Not-Call registry. These commenters note that such regulatory consistency

will build upon existing knowledge and systems designed for compliance with the National DNC registry and, therefore, result in minimizing burdens that would result if such rules differ. To the extent possible, the Commission has followed the existing National DNC model and adopted requirements that are consistent with those requirements. A few commenters suggested that the Commission require a citation before issuing a monetary fine for violations of section 6507 of the Tax Relief Act by non-regulatees and/or adopt a safe harbor to protect against inadvertent violations. These commenters suggest that many entities subject to the rules contained herein may not be as familiar as Commission regulatees which necessitate some form of protection from substantial monetary penalties. The Commission adopts this statutory interpretation as it relates to the provision of a citation to non-regulatees. As discussed at length in document FCC 12–129, the statutory requirements are ambiguous on this issue. However, the Commission believes the most reasonable statutory construction is to require citations for first offences by non-regulatees and take such first offences into consideration when determining monetary penalties for subsequent violations.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

24. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

25. In general, the Commission's rule prohibiting the use of automatic dialing equipment to contact numbers on the PSAP Do-Not-Call registry apply to a wide range of entities. The rules, in particular, would apply to all operators of automatic dialing equipment. Therefore, the Commission expects that the requirements adopted in this proceeding could have a significant economic impact on a substantial number of small entities. Determining the precise number of small entities that would be subject to the requirements in the document FCC 12–129, however, is not readily feasible. Below, the Commission has described some current data that are helpful in describing the number of small entities that might be affected by its action.

26. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1.6 million small organizations.

27. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the rules adopted in document FCC 12–129. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

28. *Telemarketing Bureaus and Other Contact Centers.* According to the Census Bureau, this economic census category ''comprises establishments primarily engaged in operating call centers that initiate or receive communications for others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients' products or services, (2) taking orders for clients, (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client's products or services.'' The SBA has developed a small business size standard for this category, which is: all such entities having $7 million or less in annual receipts. According to Census Bureau data for 2007, there were 2,100 firms in this category that operated for the entire year. Of this total, 1,885 firms had annual sales of under $5 million, and an additional 145 had sales of $5 million to $9,999,999. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Tax Relief Act requires the Commission to establish a Do-Not-Call registry for PSAPs. The Act specifies that PSAPs will be permitted to register telephone numbers on this registry. This allows PSAPs or their designated representatives to review their current telephone numbers and then provide those numbers to the administrator of the registry for inclusion on the PSAP Do-Not-Call registry. This will necessitate some administrative functions such as designating a representative to provide contact information on behalf of the PSAP and to obtain a unique number or password used to upload numbers onto the registry. In addition, the PSAP must develop a process to verify on an annual basis that the registered numbers should continue to appear on the registry. This will require PSAPs to check and verify at least once a year which numbers should continue to be included on the registry.

30. The Tax Relief Act also prohibits the use of automatic dialing or ''robocall'' equipment to contact numbers listed on the Do-Not-Call registry. As a result, operators of automatic dialing equipment will be required to check the registry and update their calling systems no later than each 31 days to ensure that they do not contact any telephone number listed on the PSAP Do-Not-Call registry. In order to access the registry, operators of automatic dialing equipment will be required to provide contact information and certify that they will not use the telephone numbers for any purpose other than compliance with this Act. In addition, OADEs will need to develop a process to ensure that the list of registered numbers obtained from the PSAP Do-Not-Call registry is not disclosed or disseminated for any purpose other than compliance with the Tax Relief Act. Such a process may entail training personnel, recording access to such information in a secure manner, and updating automatic dialing systems to ensure that such equipment

is not used to contact numbers on the PSAP registry.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. Many operators of automatic dialing equipment subject to the Commission's rules are familiar with the rules adopted for compliance with the TCPAs analogous prohibitions on use the autodialers and the National Do-Not Call registry. Therefore, the Commission has adopted similar requirements herein to reduce compliance burdens and confusion. For example, the Commission has adopted the TCPA's definition of an autodialer and ''emergency purpose'' for use in this context of the PSAP registry. In addition, the Commission has adopted the same requirement that callers update and scrub any numbers listed on the PSAP registry no later than every 31 days; the same time frame which is required for the National Do-Not-Call registry. As part of the process to access the PSAP registry, the Commission has required OADEs to provide certain information including all telephone numbers used to place autodialed calls. A few commenters indicated that the provision of this information might be burdensome. The Commission concluded, however, that this information is necessary to trace the calling party in investigating any potential violation of its rules. In addition, the Commission provides substantial flexibility to PSAPs to determine which numbers they wish to upload onto the registry. The Commission requires PSAPs to check the registry on an annual basis to ensure that the numbers they have registered should remain on that registry. A few commenters suggested an alternative approach which would have required PSAPs to check the registry once only every seven years. The Commission concluded, however, that an annual review better ensures the accuracy of the database while imposing minimal burdens on the PSAP.

Ordering Clauses

32. Pursuant to sections 1, 2, 4(i), 227, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 227, 503, and sections 6003 and 6507 of the Middle Class Tax Relief and Job Creation Act of 2012, that document FCC 12–129 *is adopted.*

33. The Consumer and Governmental Affairs Bureau and Office of the Managing Director are delegated authority to take actions necessary to resolve any operational or administrative details relating to the Public Safety Answering Point Do-Not-Call registry including an announcement of the effective compliance date once the PSAP Do-Not-Call registry has become operational.

34. The Consumer and Governmental Affairs Bureau set an effective date of no less than six months after publication of a Public Notice announcing the date by which interested parties must begin compliance with the requirements adopted herein.

35. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 12–129, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 1 and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112–96.

Subpart A—General Rules of Practice and Procedure

■ 2. Amend § 1.80 by adding paragraph (a)(6), redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(7) and (b)(8), and add new paragraphs (b)(5) and (b)(6) to read as follows:

§ 1.80 Forfeiture proceedings.

(a) * * *

(6) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

(b) * * *

(5) If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than $100,000 per incident nor more than $1,000,000 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(6) If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for contacting such a telephone number shall be not less than $10,000 per call nor more than $100,000 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

Subpart L—Restrictions on Telemarketing and Telephone Solicitation

■ 4. Amend Subpart L by adding § 64.1202 to read as follows:

§ 64.1202 Public safety answering point do-not-call registry.

(a) As used in this section, the following terms are defined as:

(1) *Operators of automatic dialing or robocall equipment.* Any person or entity who uses an automatic telephone dialing system, as defined in section 227(a)(1) of the Communications Act of 1934, as amended, to make telephone calls with such equipment.

(2) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive emergency calls and route them to emergency service personnel pursuant to section 222(h)(4)

of the Communications Act of 1934, as amended. As used in this section, this term includes both primary and secondary PSAPs.

(3) *Emergency Purpose.* A call made necessary in any situation affecting the health and safety of any person.

(b) *PSAP Numbers and Registration.* Each PSAP may designate a representative who shall be required to file a certification with the administrator of the PSAP registry, under penalty of law, that they are authorized and eligible to place numbers onto the PSAP Do-Not-Call registry on behalf of that PSAP. The designated PSAP representative shall provide contact information, including the PSAP represented, contact name, title, address, telephone number, and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone numbers associated with the provision of emergency services or communications with other public safety agencies. On an annual basis designated PSAP representatives shall access the registry, review their numbers placed on the registry to ensure that they remain eligible for inclusion on the registry, and remove ineligible numbers.

(c) *Prohibiting the use of Autodialers to Contact Registered PSAP Numbers.* An operator of automatic dialing or robocall equipment is prohibited from using such equipment to contact any telephone number registered on the PSAP Do-Not-Call registry other than for an emergency purpose. This prohibition encompasses both voice and text calls.

(d) *Granting and Tracking Access to the PSAP Registry.* An operator of automatic dialing or robocall equipment may not obtain access or use the PSAP Do-Not-Call registry until it provides to the designated registry administrator contact information that includes the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number, the operator's email address, and all outbound telephone numbers used to place autodialed calls, including both actual originating numbers and numbers that are displayed on caller identification services, and thereafter obtains a unique identification number or password from the designated registry administrator. All such contact information provided to the designated registry administrator must be updated within 30 days of any change to such information. In addition, an operator of automatic dialing equipment must certify when it accesses the registry, under penalty of law, that it is accessing the registry solely to prevent autodialed calls to numbers on the registry.

(e) *Accessing the Registry.* An operator of automatic dialing equipment or robocall equipment shall, to prevent such calls to any telephone number on the registry, access and employ a version of the PSAP Do-Not-Call registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and shall maintain records documenting this process. It shall not be a violation of paragraph (c) of this section to contact a number added to the registry subsequent to the last required access to the registry by operators of automatic dialing or robocall equipment.

(f) *Restrictions on Disclosing or Dissemination of the PSAP Registry.* No person or entity, including an operator of automatic dialing equipment or robocall equipment, may sell, rent, lease, purchase, share, or use the PSAP Do-Not-Call registry, or any part thereof, for any purpose except to comply with this section and any such state or Federal law enacted to prevent autodialed calls to telephone numbers in the PSAP registry.

[FR Doc. 2012–27672 Filed 11–28–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 230
Thursday, November 29, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0785; FRL–9755–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Incorporation by Reference of Pennsylvania's Control of NO_X Emissions From Glass Melting Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP). The SIP revision adds a regulation controlling nitrogen oxides (NO_X) emissions from glass melting furnaces to the Allegheny County Health Department (ACHD) Rules and Regulations. The ACHD regulation incorporates by reference the Pennsylvania regulations and related definitions for controlling NO_X emissions from glass melting furnaces. The SIP revision is a regulation that will reduce emissions of NO_X from glass melting furnaces. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0785 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0785, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0785. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Incorporation by Reference of Pennsylvania's Control of Nitrogen Oxide Emissions from Glass Melting Furnaces,'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: November 7, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–28830 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0797; FRL–9755–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Incorporation by Reference of Pennsylvania's Consumer Products Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The SIP revision adds section 2105.88—Consumer Products to Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control, to incorporate by reference 25 *Pa. Code* sections 130.201–130.471 (Consumer Products) of PADEP's Air Pollution Control Act to reduce emissions of volatile organic compounds (VOC). In the Final Rules section of this **Federal Register,** EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0797 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov*

C. *Mail:* EPA–R03–OAR–2012–0797, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0797. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Incorporation by Reference of Pennsylvania's Consumer Products Regulations,'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: November 6, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–28832 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0198, FRL–9755–7]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; NO_X Emission Trading Orders as Single Source SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision allows facilities to create and/or use emission credits to comply with the NO_X emission limits required by Regulations of Connecticut State Agencies (RCSA) section 22a–174–22 (Control of Nitrogen Oxides) using NOx Emission Trading Orders (trading orders). The intended effect of this action is to propose approval of the individual trading orders to allow facilities to determine the most cost-effective way to comply with the state regulation. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before December 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2010–0198 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: dahl.donald@epa.gov.*

3. *Fax:* (617) 918–0657

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2010–0198'',

Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th floor, (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2010–0198. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the state submittals are also available for public inspection during normal business hours, by appointment at the State Air Agency. The Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1657, fax number (617) 918–0657, email *Dahl.Donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose

On August 18, 2000, December 12, 2002, July 1, 2004, and January 13, 2006, the State of Connecticut submitted formal revisions to its State Implementation Plan (SIP). These SIP revisions consist of 149 source-specific trading orders that allow 50 sources to trade emission credits in order to comply with state regulations for reducing nitrogen oxide (NO_X) emissions. We previously approved source-specific trading orders issued by Connecticut under this program on September 28, 1999 (64 FR 52233) and March 23, 2001 (66 FR 16135).

II. What action is EPA proposing in today's notice?

Today, EPA is proposing to approve 149 NO_X Emission Trading Orders that will allow facilities in Connecticut to generate and or use emission credits for compliance with the NO_X emission limits that were established as part of Connecticut's strategy to lower ozone levels, also known as reasonable available control technology (RACT). EPA is not taking action on some of the orders included in the July 1, 2004 submittal: Trading Order 8021 issued to Pfizer, Trading Order 8246 issued to Sikorsky Aircraft, Trading Order 8110A issued to Yale University and Consent Order 7019A issued to Hamilton Sundstrand Corporation. EPA is also not taking action on the Creation Notice Nos. NJ–1, NJ–2, and NJ–4 included in the August 18, 2000 submittal. EPA will take action on these orders and creation notices at a later date. Lastly, EPA is not taking action on Trading Orders 8115, Modification 1 and 8115A issued to University of Connecticut in Mansfield because these trading orders were superseded by Trading Order 8115B which was included in the July 1, 2004 submittal.

III. What facilities are affected by today's action?

EPA is proposing to approve NO_X emission trading orders for the facilities listed in the table below.

Trading Order No(s).	Name of facility	Facility location
1494A, 8116 Modification, 8116A, 8116B	Connecticut Resources Recovery Authority.	Hartford.
1494 Modifications 2, 3, 4, 5, and 6	Connecticut Light and Power	Branford, Greenwich, Hartford, Montville, Middletown, Milford, Preston, Norwalk, and Torrington.
8154 Modifications 1, 2, and 3, 8154A	Combustion Engineering	Windsor.
1626, 1626 Modification 1, 8247	Borough of Naugatuck	Naugatuck.
8159, 8181, 8181A, 8181A Modification 1, 8219, 8219A, 8219A Modification 1, 8251, 8251 Modification 1.	Connecticut Light and Power/Devon Power LLC.	Milford.
8109	Hamilton Sundstrand	Windsor Locks.
8093A, 8093B, 8093C, 8093C Modification 1, 8136, 8136A	Pfizer	Groton.
8119 Modification, 8119A, 8119A Modification 1	City of Norwich, Department of Public Utilities.	Norwich.
8092 Modification, 8103 Modifications 1 and 2, 8177 Modification 1, 8241, 8241 Modification 1, 8242, 8243, 8244, 8244 Modification 1, 8253, 8253 Modification 1.	United Illuminating/Wisvest-Connecticut LLC/PSEG Power Connecticut LLC.	Bridgeport.
8115 Modification 2, 8115B	University of Connecticut	Storrs.
8107 Modifications 1 and 2, 8152, 8152 Modification, 8152A, 8221, 8221A, 8222, 8222A.	Northeast Nuclear Energy/Dominion Nuclear.	Waterford.
8180, 8180 Modification 1, 8180A, 8180A Modification 1	Connecticut Jet Power	Branford, Greenwich, and Torrington.
8114 Modifications 1 and 2, 8114A	CYTEC Industries	Wallingford.
8117, 8117A, 8117B	Sprague Paperboard	Versailles.
8157, 8160, 8162, 8182, 8182A, 8182A Modification 1, 8213, 8213A, 8213A Modification 1, 8214, 8214A, 8214A Modification 1, 8215, 8215A, 8215A Modification 1, 8227, 8227A, 8227A Modification 1.	Connecticut Light and Power/Middletown Power LLC.	Middletown.
8156, 8161, 8183, 8183A, 8183A Modification 1, 8216, 8216A, 8216A Modification 1, 8217, 8217A, 8217A Modification 1.	Connecticut Light and Power/Montville Power LLC.	Montville.
8158, 8184, 8184A, 8184A Modification 1, 8218, 8218A, 8218A Modification 1.	Connecticut Light and Power/Norwalk Power LLC.	Norwalk.
8134, 8134A, 8248	United Technologies	East Hartford.
8175, 8175 Modification 1, 8175A, 8175A Modification 1	Northeast Generation Company	Berlin.
8102 Modification, 8153, 8176 Modification 1, 8240, 8240 Modification 1, 8243.	United Illuminating/Wisvest-Connecticut LLC/PSEG Power Connecticut LLC.	New Haven.
8220, 8220A, 8220A Modification 1	Bristol Meyers Squibb	Wallingford.
8124, 8124A	Stone Container	Uncasville.
8120, 8120A	Sikorsky Aircraft	Stratford.
8137 Modifications 1 and 2, 8137A	AlliedSignal and U.S. Army Tank	Stratford.
8188	Allegheny Ludlum	Wallingford.
8112, 8112A, 8112A Modification 1, 8201CC	United States Naval Submarine Base.	Groton.
8230	Jacobs Vehicle Systems	Bloomfield.
8110 Modification	Yale University	New Haven.
8123 Modification, 8123A	Algonquin Gas Transmission	Cromwell.
8250, 8261	Algonquin Windsor Locks	Windsor Locks.
8249, 8249 Modification 1	Capitol District Energy Center	Hartford.
8094 Modification	Ogden Martin	Bristol.
8095 Modification	American Ref-Fuel	Preston.
8100 Modification	Bridgeport Resco	Bridgeport.
8101 Modification	Connecticut Department of Mental Health and Addiction Services.	Middletown.
8111 Modification	Uniroyal Chemical	Naugatuck.
8118 Modification	South Norwalk Electrical Works	Norwalk.
8130 Modification	Connecticut Department of Public Works.	Newtown.
8132 Modification	Bridgeport Hospital	Bridgeport.
8141 Modification	Town of Wallingford, Department of Public Utilities.	Wallingford.

IV. Do these trading orders allow new facilities to use emission credits to comply with RACT?

Most of the trading orders being approved today allow the same facilities in Connecticut to continue to create or use emission credits that were approved into the SIP on September 28, 1999 (64 FR 52233) and March 23, 2001 (66 FR 16135). Facilities that are having their trading orders approved for the first time are: Hamilton Sundstrand in Windsor Locks, Borough of Naugatuck in Naugatuck, Bristol Meyers Squibb in Wallingford, Capital District Energy Center in Hartford, Combustion Engineering in Windsor, Stone Container in Uncasville, and Sprague Paperboard in Versailles.

V. How did EPA review and evaluate these trading orders?

EPA issued a guidance document ''Improving Air Quality With Economic Incentive Programs'' (EIP Guidance). (See EPA–452/R–01–001, January 2001). This guidance applies to discretionary

emission trading programs (EIPs) that are submitted to EPA for approval as a revision of the State Implementation Plan to attain national ambient air quality standards for criteria pollutants. This guidance does not require review of previously approved programs and is not EPA's final action on these discretionary emission trading programs. EPA's final action on these discretionary emission trading programs occurs when EPA acts on a State's request to revise the SIP. The EIP Guidance is non-binding.

Fundamental principles that apply to all EIPs are integrity (meaning that credits are based on emission reductions that are surplus, enforceable, quantifiable, and permanent), equity, and environmental benefit. These fundamental principles can apply to an EIP in its entirety (the programmatic level) or to individual sources (the source-specific level). In addition, EIPs that allow sources to purchase credits to demonstrate compliance with reasonable available control technology (RACT) need to meet additional requirements specified in section 16.13 of the EIP Guidance. EPA evaluated the Connecticut trading orders against these three fundamental principles, additional requirements for sources subject to RACT, and applicable Clean Air Act requirements. Connecticut's trading orders are fully consistent with these fundamental principles and the requirements for sources subject to RACT, and EPA is approving these trading orders as part of Connecticut's SIP.

A. What is EPA's analysis of the fundamental principle of integrity?

The fundamental principle of integrity consists of the qualities of being surplus, enforceable, quantifiable, and permanent.

1. Integrity Element One—Surplus

Emission reductions are surplus if the reductions are not presently relied upon in any other air quality-related programs such as the SIP, SIP-related requirements such as transportation conformity, other adopted state measures not in the SIP, Federal rules that focus on reducing precursors of criteria pollutants such as new source performance standards, or a consent decree. Emission reductions measured by sources on a retrospective basis are surplus if the source's actual emissions are below its baseline allowable or historical actual emissions, whichever is lower, and the retrospective inventories reflect actual emission information as appropriate.

Each source-specific trading order Connecticut submitted creates emission reduction credits (ERCs), establishes a baseline of 1990, and sets emission limits based on the most stringent applicable emission rate. Credits are only generated when a permitted facility's emissions are below the emission rate and the baseline. Therefore the credits produced are in addition to reductions from other requirements of the Clean Air Act.

2. Integrity Element Two—Enforceable

Emission reductions use, generation, and other required actions in the EIP are enforceable on a programmatic basis if they are independently verifiable, define program violations, and identify those liable for violations. For enforceability, both the State and EPA should have the ability to apply penalties and secure appropriate corrective actions where applicable. Citizens should also have access to all the emissions-related information obtained from the source so that citizens can file suits against sources for violations. Required actions must be practicably enforceable in accordance with other EPA guidance on practicable enforceability. At the source- specific level, the source must be liable for violations, the liable party must be identifiable, and the State, the public, and EPA must be able to independently verify a source's compliance. The EIP Guidance outlines enforcement elements common to all trading EIPs in Chapter 6.0.

Each facility participating in trading NO_X credits has been issued a source-specific trading order containing enforceable conditions for quantifying, recording, and reporting ERCs. Each trading order establishes the monitoring/testing protocol, quantifying emissions based on either a periodic stack test for developing an emission rate or continuous emission monitors that directly measure NO_X emissions. Each trading order establishes reporting requirements which includes emissions based upon the approved monitoring/testing protocol, the number of credits the source generated, if any, and credits the source previously banked or purchased to cover its emissions. The State also reviews all of the sources subject to trading orders to determine which sources did not meet the specific conditions of their trading orders. Connecticut has authority to enforce the trading orders and the underlying RACT requirements of Regulations of Connecticut State Agencies (RCSA) section 22a–174–22 pursuant to RCSA section 22a–174–12. By approving these source-specific trading orders, they will become part of the SIP and be enforceable by both EPA and citizens.

3. Integrity Element Three—Quantifiable

The generation or use of emission reductions by a source is quantifiable on a source-specific basis if the source can reliably calculate the amount of emissions and/or emission reductions occurring during the implementation of the program, and replicate the calculations. The EIP Guidance further states that when quantifying results, sources must use the same methodology used to measure baseline emissions, unless there are good technical reasons that this approach is not appropriate. Common elements for quantifying results of an EIP are included in Chapter 5.0 of the EIP Guidance. All EIPs should incorporate provisions for predicting results, addressing uncertainty, approving quantification protocols, and emission quantification methods. For a reduction to be certified as an ERC, the reduction must be real, quantifiable, and surplus at the time the ERC is generated.

Each source-specific trading order contains a protocol for quantifying emissions. Continuous Emission Monitors (CEMs) are used to quantify emissions at electric generating units that are creating ERCs. CEMs at these facilities are also used to determine if the source needs to use ERCs to comply with NO_X RACT. For sources without CEMs, the protocol requires the source to determine a NO_X emission rate through stack testing. The source is also required to maintain fuel use records. Each trading order contains an equation that calculates NO_X emissions on a mass basis using the results from the most recent stack test, CEMs data and/or fuel records. The generation and use of credits is therefore quantifiable.

4. Integrity Element Four—Permanent

To satisfy the EIP Guidance expectations for permanence, Connecticut's trading program must ensure that no emission increases (compared to emissions if there was no EIP) occur over the time defined in the SIP. On a source-specific basis, the permanence expectations are met if the sources participating in the EIP commit to actions or achieve reductions for a future period of time as defined in the EIP.

Each source-specific trading order expires five years from the issuance date. This allows Connecticut to determine every five years if emission trading is still the best mechanism for reducing NO_X emissions at an individual source. Issuing new trading orders every five years also allows the

State to take into account any new CAA requirements that become effective after the initial trading order was issued.

On an annual basis, sources must report to Connecticut all ERCs generated and used. The State reviews each credit generated and assigns an identification number to each credit. The annual reports allow the State to determine both the generator and user of each credit. Because each credit generated receives an individual identification number, the State can reliably track their use.

B. What is EPA's analysis of the fundamental principle of equity?

The equity principle is composed of two elements—general equity and environmental justice.

1. Equity Element One—General Equity

General equity means that an EIP ensures all segments of the population are protected from public health problems and no segment of the population receives a disproportionate share of a program's disbenefits. EIPs should specifically protect communities from disproportionate impacts from emission shifts and foregone emission reductions.

Connecticut has determined the majority of emission credits are generated at a few electric generating units and some other large industrial boilers that have continuous emission monitors. These sources are large emitters that can economically decrease emissions on a large scale. However, sources using emission credits are much smaller emitters of NO_X and are spread throughout the State. Therefore, while the benefit of emissions reductions may be higher in certain geographic areas, the impact from sources using credits will not severely impact one geographic area over another.

2. Equity Element Two—Environmental Justice

The environmental justice (EJ) element applies if the EIP covers VOCs and could disproportionately impact communities populated by racial minorities, people with low incomes, and/or Tribes. The Connecticut trading program does not allow emission trading of VOC credits. Therefore, today's actions allowing the trading of NO_X emission credits does not create an EJ issue.

C. What is EPA's analysis of the fundamental principle of environmental benefit?

All EIPs must be environmentally beneficial and can demonstrate this principle through more rapid emission reductions or faster attainment than would have occurred without the EIP.

The discrete emission reduction credit (DERC) EIP meets the expectations for the environmental benefit principle. The ability to generate DERCs provides an incentive for early compliance and more rapid emission reductions. Connecticut sources that create emission credits through their respective trading orders must discount the actual credits generated by 10%. In addition, Connecticut discounts the credits generated or used at some sources depending on certain conditions, such as an additional 10% discount rate for sources using stack tests in lieu of continuous emission monitors. These various discount rates result in greater emission reductions then would otherwise be achieved without trading, resulting in an environmental benefit.

D. What is EPA's analysis regarding the RACT sources?

Sources must use the presumptive RACT limit in the baseline calculation. Sources are not allowed to use an alternative RACT limit in determining the baseline emission rate.

Connecticut's trading orders use the lower of actual emissions in 1990 or the RACT emission limit established for the specific source category, whichever is less. The source-specific trading orders do not use an alternative RACT emission rate.

The EIP Guidance also contains guidance for RACT emission limits with long averaging times and prohibits emission credits generated outside of the ozone season from being used during the ozone season.

Connecticut's trading orders limit sources requiring credits for excess emissions during ozone season to only use credits generated during ozone season.

E. Conclusion

EPA reviewed the source-specific trading orders with respect to the expectations of the EIP Guidance and the requirements of the Clean Air Act. EPA has concluded after review and analysis of the source-specific trading orders that they are approvable.

VI. Proposed Action

EPA is proposing to approve the Connecticut SIP revision for the NO_X trading orders, which were submitted on August 18, 2000, December 12, 2002, July 1, 2004, and January 13, 2006. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has made the determination that the SIP revision is approvable because it is in accordance with the CAA and EPA regulations.

VII. 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 proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: November 14, 2012.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2012–28908 Filed 11–28–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–NM–0006; FRL–9756–3]

Approval and Promulgation of Implementation Plans; New Mexico; New Source Review (NSR) Preconstruction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for New Mexico. Among the changes, EPA is proposing to approve are the following: The establishment of a new minor NSR (MNSR) general construction permitting program; changes to the MNSR Public Participation requirements; the establishment of three different types of MNSR Permit Revisions; and the addition of exemptions for *de minimis* emission sources and activities from obtaining a MNSR permit. EPA proposes to find that these revisions to the New Mexico SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations and are consistent with EPA policies. EPA is proposing this action under section 110 of the Act.

DATES: Comments must be received on or before December 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2005–NM–0006, by one of the following methods:

(1) *www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *Email:* Ms. Ashley Mohr at *mohr.ashley@epa.gov.*

(3) *Fax:* Ms. Ashley Mohr, Air Permits Section (6PD–R), at fax number 214–665–6762.

(4) *Mail:* Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(5) *Hand or Courier Delivery:* Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 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–2005–NM–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. 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 and any form of encryption and should 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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 *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), 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. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Ashley Mohr (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–7289; fax number (214) 665–6762; email address *mohr.ashley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document the following terms have the meanings described below:

• ''we'', ''us'' and ''our'' refer to EPA.

• ''Act'' and ''CAA'' mean the Clean Air Act.

• ''40 CFR'' means Title 40 of the Code of Federal Regulations—Protection of the Environment.

• ''SIP'' means the State Implementation Plan established under section 110 of the Act.

• ''NSR'' means new source review.

• ''TSD'' means the Technical Support Document for this action.

• ''NAAQS'' means any national ambient air quality standard established under 40 CFR part 50.

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I. What action is EPA proposing?

The Act at section 110(a)(2) requires states to develop and submit to EPA for approval into the SIP preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and MNSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain thresholds and thus do not qualify as ''major'' and applies regardless of the NAAQS designation of the area in which a source is located. Together, these programs are referred to as the NSR program. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160–51.166; and part 51, Appendix S.

EPA is proposing to approve revisions to the NSR SIP for New Mexico submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, which incorporate changes to the Construction Permits regulation contained in 20.2.72 of the New Mexico Administrative Code (NMAC), also known as Part 72. Part 72 contains the provisions that establish New Mexico's Minor NSR permitting program as well as preconstruction permitting requirements potentially applicable to other programs under the NMAC. EPA also is proposing to approve as part of the New Mexico NSR SIP, the letter dated November 7, 2012, from the Secretary committing the NMED Air Quality Bureau to providing notification on the NMED's Web site of all second 30-day public comment periods provided for under Paragraph B of Section 206 of Part 72.

The five SIP revisions submittals under review in this action contain proposed changes to each of the current SIP-approved Sections of Part 72 and include the proposed addition of two new Sections within the Part. All changes are identified in Table 1 of this rulemaking. These proposed changes include non-substantive changes to Part 72, such as corrections of typographical errors and additions of clarifying language to the existing SIP. These proposed changes also include revisions that result in a more stringent SIP than currently approved, such as incorporation of additional recordkeeping and notification requirements for portable sources to relocate without a permit; these changes resulting in a more stringent SIP are discussed in more detail in this rulemaking and TSD. Furthermore, some of the revisions include changes that alter current SIP-approved permitting programs but still meet applicable federal requirements, such as a change from case-by-case permitting to general permitting for certain Minor NSR sources. Finally, proposed changes also include revisions that are less stringent than the current SIP and those revisions must be evaluated under section 110(l) of the CAA to determine they will not interfere with attainment or reasonable further progress or any other applicable requirement of the Act. These revisions include the addition of exemptions for *de minimis* sources and activities from MNSR permitting requirements, tiered permit revisions, and changes to MNSR public notice and participation requirements. The November 7, 2012 letter from the Secretary provides clarifying information for the changes to NMSR public notice and participation requirements. Our technical analysis of all these proposed changes contained in the May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 SIP revision submittals, the Secretary's November 7, 2012 letter, and additional supplemental information provided by NMED, has found that they meet the CAA and 40 CFR Part 51 and are consistent with EPA policies.[1] [2] [3] [4] Therefore, EPA proposes action to approve the revisions to Part 72 and the Secretary's November 7, 2012 letter into the New Mexico NSR SIP. EPA is proposing this action under section 110 of the Clean Air Act (the Act). We

[1] Clarification of Exemptions in Section 202 of 20.2.72 NMAC—Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

[2] Clarification of Intent for Section 220 of 20.2.72 NMAC—Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

[3] Permit Exemptions data provided via electronic mail dated September 18, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

[4] Historical Technical permit revisions data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

provide a summary of the reasoning comprising our evaluation in this rulemaking, as well as a more detailed evaluation and analysis in the Technical Support Document (TSD) for this rulemaking.

II. What did New Mexico submit?

EPA's proposed approval action today addresses portions of five revisions to the New Mexico SIP submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006. EPA also is proposing to approve as part of the New Mexico NSR SIP, the letter dated November 7, 2012, from the Secretary.

A. May 29, 1998 SIP Revision Submittal

The State of New Mexico submitted a revision on May 29, 1998 to 20.2.72 NMAC—Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.72.104 NMAC, Effective Date; 20.2.72.202 NMAC, Permit Revisions; 20.2.72.203 NMAC, Contents of Applications; and 20.2.72.207 NMAC, Permit Decisions and Appeals.
- *Addition of the following new sections:* 20.2.72.219 NMAC, Permit Revisions and 20.2.72.220 NMAC, General Permits.

B. November 6, 1998 SIP Revision Submittal

The State of New Mexico submitted a revision on November 6, 1998 to 20.2.72 NMAC—Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.72.210 NMAC, Permit Conditions and 20.2.72.300 NMAC, Definitions.

C. April 11, 2002 SIP Revision Submittal

The State of New Mexico submitted a revision on April 11, 2002 to 20.2.72 NMAC—Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following sections:* 20.2.72.107 NMAC, Definitions; 20.2.72.201 NMAC, New Source Review Coordination; 20.2.72.203 NMAC, Contents of Applications; 20.2.72.206 NMAC, Public Notice and Participation; 20.2.72.207 NMAC, Permit Decisions and Appeals; 20.2.72.208 NMAC, Basis for Denial of Permit; 20.2.72.215 NMAC, Emergency Permit Process; 20.2.72.219 NMAC, Permit Revisions; 20.2.72.220 NMAC, General Permits; 20.2.72.301 NMAC, Applicability; 20.2.72.302 NMAC, Contents of Applications; and 20.2.72.304 NMAC, Permit Decisions.
- In addition to the revisions of the previously listed sections, the April 11, 2002 submittal also included the renumbering of several existing sections and formatting changes that were made throughout the entire Part. These formatting changes were necessary for the provisions contained in Part 72 to match the formatting style of other Parts contained in the NMAC.

D. April 25, 2005 SIP Revision Submittal

The State of New Mexico submitted a revision on April 25, 2005 to 20.2.72 NMAC—Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following section:* 20.2.72.219 NMAC, Permit Revisions.

E. November 2, 2006 SIP Revision Submittal

The State of New Mexico submitted a revision on November 2, 2006 to 20.2.72 NMAC—Construction Permits for incorporation into the New Mexico SIP. This submittal includes the following changes:

- *Revisions to the following section:* 20.2.72.216 NMAC, Nonattainment Area Requirements.

Table 1 summarizes the changes that are in the SIP revisions submitted on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006. A summary of EPA's evaluation of each section and the basis for this action is discussed in Section III of this preamble. The TSD includes a detailed evaluation of the referenced SIP submittals. Table 1. Summary of each SIP submittal that is affected by this action.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Section	Title	Submittal dates	Description of change	Proposed action
20.2.72 NMAC—Construction Permits				
Issuing Agency				
20.2.72.100 NMAC ..	Issuing Agency	4/11/2002	Section 100 renumbered to Section 1 and revised to update the section title formatting.	Approval.
Scope				
20.2.72.101 NMAC ..	Scope	4/11/2002	Section 101 renumbered to Section 2 and revised to update the section title formatting.	Approval.
Statutory Authority				
20.2.72.102 NMAC ..	Statutory Authority	4/11/2002	Section 102 renumbered to Section 3 and revised to update the section title formatting.	Approval.
Duration				
20.2.72.103 NMAC ..	Duration	4/11/2002	Section 103 renumbered to Section 4 and revised to update the section title and section references formatting.	Approval.
Effective Date				
20.2.72.104 NMAC ..	Effective Date	5/29/1998	Section revised to account for different effective dates for the different sections contained in this Part.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
		4/11/2002	Section 104 renumbered to Section 5 and revised to update the section title and date formatting.	Approval.
Objective				
20.2.72.105 NMAC ..	Objective	4/11/2002	Section 105 renumbered to Section 6 and revised to update the section title formatting.	Approval.
Amendment and Supersession of Prior Regulations				
20.2.72.106 NMAC ..	Amendment and Supersession of Prior Regulations.	4/11/2002	Section 106 renumbered to Section 8 and revised to update the section title formatting.	Approval.
Definitions				
20.2.72.107 NMAC ..	Definitions	4/11/2002	Section 107 renumbered to Section 7 and revised to update the section title, section references, and list numbering formatting; Section revised to update the definition of ''Potential Emission Rate''.	Approval.
Documents				
20.2.72.108 NMAC	Documents	4/11/2002	Section 108 renumbered to Section 9 and revised to update the section title formatting.	Approval.
Application for Construction Modification, NSPS, and NESHAP—Permits and Revisions				
20.2.72.200 NMAC ..	Application for Construction, Modification, NSPS, and NESHAP—Permits and Revisions.	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
New Source Review Coordination				
20.2.72.201 NMAC ..	New Source Review Coordination.	4/11/2002	Section revised to include clarification regarding the number of applications required if source is subject to NSR under multiple parts; Section revised to update the section title and section references formatting.	Approval.
Permit Revisions				
20.2.72.202 NMAC ..	Permit Revisions	5/29/1998	Section revised to add a list of emission sources and activities that may be exempt from certain preconstruction permitting requirements; Section revised to include an exemption from preconstruction permitting applicability for a specific group of sources that trigger permitting only as a result of NSPS and NESHAP requirements.	Approval.
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Contents of Applications				
20.2.72.203 NMAC ..	Contents of Applications	5/29/1998	Section revised to update provisions to reflect the tiered permit revisions approach and to add clarifying language regarding public notice requirements, including requirements for public service announcements.	Approval.
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Confidential Information Protection				
20.2.72.204 NMAC ..	Confidential Information Protection.	4/11/2002	Section revised to update the section title and section references formatting.	Approval.
Construction, Modification and Permit Revision in Bernalillo County				
20.2.72.205 NMAC ..	Construction, Modification and Permit Revision in Bernalillo County.	4/11/2002	Section revised to update the section title formatting	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
Public Notice and Participation				
20.2.72.206 NMAC ..	Public Notice and Participation.	5/29/1998	Section was revised to remove a descriptive term from the provisions that the Department felt was unnecessary and caused confusion in the current provisions.	Approval.
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting; Section revised to change the public notice process to a two-step notice with the public comment period reduced from 45 days to 30 days.	Approval.
Permit Decisions and Appeals				
20.2.72.207 NMAC ..	Permit Decisions and Appeals.	5/29/1998	Section revised to include clarifying language and to specify what requirements in the section apply only to significant permit revisions.	Approval.
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Basis for Denial of Permit				
20.2.72.208 NMAC ..	Basis for Denial of Permit ...	4/11/2002	Section revised to include clarifying language and to delete references to provisions that have been previously removed from the NMAC.	Approval.
Additional Legal Responsibilities on Applicants				
20.2.72.209 NMAC ..	Additional Legal Responsibilities on Applicants.	4/11/2002	Section revised to update the section title formatting	Approval.
Permit Conditions				
20.2.72.210 NMAC ..	Permit Conditions	11/6/1998	Section was revised to correct a typographical error that was adopted by the state in a previous revision of the Section.	Approval.
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Permit Cancellations				
20.2.72.211 NMAC ..	Permit Cancellations	4/11/2002	Section revised to update the section title and list numbering formatting.	Approval.
Permittee's Notification Requirements to Department				
20.2.72.212 NMAC ..	Permittee's Notification Requirements to Department.	4/11/2002	Section revised to update the section title	Approval.
Startup and Followup Testing				
20.2.72.213 NMAC ..	Startup and Followup Testing.	4/11/2002	Section revised to update the section title and section references formatting.	Approval.
Source Class Exemption Process (Permit Streamlining)				
20.2.72.214 NMAC ..	Source Class Exemption Process (Permit Streamlining).	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Emergency Permit Process				
20.2.72.215 NMAC ..	Emergency Permit Process	4/11/2002	Section revised to update the section title and section references formatting.	Approval.
Nonattainment Area Requirements				
20.2.72.216 NMAC ..	Nonattainment Area Requirements.	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
		11/2/2006	Section revised to include clarifying language and to specify permitting applicability tests for permit actions in nonattainment areas.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
Compliance Certifications				
20.2.72.217 NMAC ..	Compliance Certifications ...	4/11/2002	Section revised to update the section title and section references formatting.	Approval.
Enforcement				
20.2.72.218 NMAC ..	Enforcement	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Permit Revisions				
20.2.72.219 NMAC ..	Permit Revisions	5/29/1998	Section added to the Part and permit revisions previously contained in Section 202 were moved to this Section and revised to include three separate tiers of permit revisions.	Approval.
		4/11/2002	Section updated to revise references to other provisions in the Part that were changes as a result of simultaneous updates; Section revised to update the section title, section references, and list numbering formatting.	Approval.
		4/25/2005	Section updated to include two additional permit actions that would qualify as Technical permit revisions instead of Significant revisions.	Approval.
General Permits				
20.2.72.220 NMAC ..	General Permits	5/29/1998	Section added to the Part to include provisions related to the state adopted General Permits preconstruction program [a].	Approval.
		4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Definitions				
20.2.72.300 NMAC ..	Definitions	11/6/1998	Section was revised to correct a typographical error that was adopted by the state in a previous revision of the Section.	Approval.
		4/11/2002	Section revised to update the section title and section references formatting.	Approval.
Applicability				
20.2.72.301 NMAC ..	Applicability	4/11/2002	Section updated to revise references to other provisions in the Part that were changes as a result of simultaneous updates; Section revised to update the section title, section references, and list numbering formatting.	Approval.
Contents of Applications				
20.2.72.302 NMAC ..	Contents of Applications	4/11/2002	Section revised to include clarifying language regarding the permit application requirements for applicant's seeking a streamlined construction permit; Section revised to update the section title, section references, and list numbering formatting.	Approval.
Public Notice and Participation				
20.2.72.303 NMAC ..	Public Notice and Participation.	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Permit Decisions				
20.2.72.304 NMAC ..	Permit Decisions	4/11/2002	Section revised to include clarifying language regarding the review of a permit application for ''administrative completeness''; Section revised to update the section title, section references, and list numbering formatting.	Approval.
General Requirements				
20.2.72.305 NMAC ..	General Requirements	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Submittal dates	Description of change	Proposed action
Source Class Requirements				
20.2.72.306 NMAC ..	Source Class Requirements	4/11/2002	Section revised to update the section title, section references, and list numbering formatting.	Approval.
Table 1—Significant Ambient Concentrations				
20.2.72.500 NMAC ..	Table 1—Significant Ambient Concentrations.	4/11/2002	Section revised to update the section title formatting	Approval.
Table 2—Permit Streamlining Source Class Categories				
20.2.72.501 NMAC ..	Table 2—Permit Streamlining Source Class Categories.	4/11/2002	Section revised to update the section title formatting	Approval.

[a] 20.2.72.220(A)(2)(c)(i) NMAC references the requirements found in 20.2.77 NMAC, 20.2.78 NMAC, and 20.2.82 NMAC (hereafter collectively referred to as Parts 77, 78, and 82), which are regulations separate from the preconstruction permitting rules governed by 20.2.72 NMAC. The regulations included in Parts 77, 78, and 82 are subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. This action is limited to determining whether the revisions to the Part 72—Construction Permit provisions contained in the New Mexico SIP comply with the Federal Clean Air Act and EPA regulations and are consistent with EPA policies. Therefore, we are approving the reference to these regulations as part of the General Permits provisions being approved into Part 72 of the New Mexico SIP so as to include the requirement that general construction permits contain adequate permit conditions to ensure compliance with the requirements contained in Parts 77, 78, and 82, but we are not evaluating or approving into the SIP the underlying and related regulations for these Parts through this rulemaking.

III. EPA's Evaluation

The current New Mexico SIP includes EPA-approved Part 72 provisions (*see* 62 FR 50514, September 26, 1997), which are related to New Mexico's MNSR construction permit program and preconstruction permitting requirements potentially applicable to other programs under the New Mexico Administrative Code. Since the September 26, 1997 EPA approval, New Mexico has submitted revisions to Part 72 provisions to EPA for review and action on the following dates: May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006. The following sections of this proposed action and the accompanying TSD analyze the proposed revisions to the Construction Permits regulation found in Part 72 to preliminarily determine whether the submitted revisions and the Secretary's Letter dated November 7, 2012 as a whole support the CAA, EPA policy, and guidance for NSR permitting.

A. What are the requirements for EPA's evaluation of a preconstruction permitting program SIP submittal?

The State of New Mexico submitted revisions to its NSR SIP on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, incorporating changes to the Construction Permits regulation contained in 20.2.72 NMAC for approval by EPA as revisions to the New Mexico NSR SIP. These SIP revisions were submitted pursuant to the applicable requirements of section 110(a)(2) of the CAA. For example, the federal requirements at Section 110(a)(2)(A) direct each SIP to include enforceable emission limitations necessary or appropriate to meet the CAA's applicable requirements. Section 110(a)(2)(C) requires each SIP to include a program to provide for the enforcement of the measures described in 110(a)(2)(A), and regulation of the modification and construction of any stationary source within attainment/unclassifiable areas and nonattainment areas. EPA regulations further governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160—51.166; and part 51, Appendix S.

In addition to the applicable preconstruction permitting program related requirements of section 110(a)(2), EPA's evaluation must consider section 110(l) of the CAA. Section 110(l) of the CAA states that EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Thus, under CAA section 110(l), the proposed NSR SIP revision submittals must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. The provisions contained in Part 72 are applicable to all ''regulated air pollutants,'' which includes all pollutants for which there are NAAQS. Therefore, as part of the 110(l) analysis, we have evaluated the proposed NSR SIP revision submittals for their impacts on attainment and reasonable further progress for all NAAQS pollutants. The entire state of New Mexico is designated attainment for all pollutants, with the exception of PM_{10} and 1-hour ozone. The only area designated nonattainment for PM_{10} in New Mexico is Anthony, which is located in Dona Ana County, and the only area designated nonattainment for the 1-hour ozone NAAQS is Sunland Park, which is also located in Dona Ana County.[5]

In EPA's technical review of New Mexico's submitted SIP revisions, as further discussed in Section III.B of this preamble, and the TSD, we evaluate each revision against the applicable federal requirements and regulations.

[5] The Sunland Park area has unique considerations for ozone planning due to airshed contributions from Mexico and Texas. Air quality within the Paso del Norte Airshed has improved over the last 10 years due to cooperative efforts between the State of Texas, the State of New Mexico, and Mexico through organizations such as the Paso Del Norte Joint Advisory Committee (JAC). Although the area has continued to monitor attainment of the 1-hour ozone standard the State chose not to submit a request for redesignation before EPA revoked the 1-hour ozone NAAQS. Monitors in Sunland Park continue to reflect attainment of the 1-hour ozone NAAQS. The State, however, did not submit a request for redesignation of the area to attainment for the 1-hour ozone standard and a section 175A maintenance plan. Because the area was never redesignated to attainment, the area must continue to meet the 1-hour ozone marginal area applicable requirements (see 40 CFR 51.905(a)(3)). Sunland Park has met the revoked 1-hour ozone standard since 1998. (See 76 FR 28181).

B. Technical Review of New Mexico's SIP Revision Submittals

The provisions found in Part 72 are divided into five subparts. Four of the five subparts contain provisions that are currently approved into the New Mexico SIP, with Subpart IV (20.2.72.400 NMAC—20.2.72.499 NMAC), which relates to Permits for Toxic Air Pollutant Emission, being outside of the scope of the New Mexico SIP.[6] The remaining four SIP-approved subparts are as follows: Subpart I (20.2.72.100 NMAC—20.2.72.199 NMAC)—General Provisions, Subpart II (20.2.72.200 NMAC—20.2.72.299 NMAC)—Permit Processing and Requirements, Subpart III (20.2.72.300 NMAC—20.2.72.399 NMAC)—Source Class Permit Streamlining, and Subpart V—Appendix. As part of the five SIP revision submittals under review in the action, changes were made to the provisions contained in each of the four SIP-approved subparts. As detailed in the TSD, the May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 SIP submittals meet the completeness criteria established in 40 CFR 51, Appendix V. In addition to the completeness review, the revisions contained in the five SIP submittals were evaluated against the applicable requirements contained in the Act and 40 CFR 51. A Section-by-Section review showing each proposed change made to Part 72 is included in the TSD for this proposed action, which also includes a summary of the revisions made to each specific section of Part 72. The following sections of this preamble provide a summary of the reasoning comprising our evaluation used in this rulemaking, specifically for those proposed revisions that include substantive changes to Part 72.

1. Submitted Revisions to Section 203—Contents of Permit Applications

40 CFR 51.160 contains federal requirements regarding information an owner or operator of a new or modified source must submit to the State or local agency. The current SIP-approved Part 72 contains requirements regarding contents of a permit application that any person seeking a permit under 20.2.72.200(A) NMAC must file with the Department. New Mexico has proposed several revisions to the required contents of permit applications as specified in Section 203 in the May 29, 1998 and April 11, 2002 SIP revision submittals. In addition to formatting, clarification, and other non-substantive changes detailed in the TSD, these revisions include substantive changes that add to existing SIP-approved requirements. These changes include the addition of provisions related to the changing, supplementing, or correcting a previously submitted permit application. The revisions also include the provision of additional requirements tied to the existing Public Service Announcement requirements for permit applicants. Because the revisions to the current SIP-approved Section 203 include additional requirements for permit applicants with respect to the contents of permit applications that were not present in the current SIP, we propose to approve these revisions into the New Mexico SIP as meeting applicable federal requirements, including 40 CFR 51.160.

2. Submitted Revisions to Section 207—Permit Decisions and Appeals

Section 207 of the currently approved SIP includes procedural requirements regarding permit and permit revision issuance by the Department, and petition for hearing and appeal procedural requirements for applicants adversely affected by a permit decision by the Department. The May 29, 1998 and April 11, 2002 SIP revisions include clarifying language, formatting changes, and other non-substantive changes to Section 207, which are further detailed in the TSD. The May 29, 1998 SIP revision also added language to change the applicability of Section 207's requirements regarding the Department's completeness determination and time frame within which the Department must take action on a permit application to Significant permit revisions, rather than all permit revisions. This change reflects the tiered permit revision approach adopted by New Mexico under the newly added Section 219, and that approach is further discussed in Subsection III.B.6 of this preamble.

The submitted Section 207 requirements, in part, specify numbers of days within which the Department shall either grant, grant subject to conditions, or deny a permit or permit revision after the Department deems a permit application administratively complete. For permit applications that are subject to the PSD requirements of Part 74, the April 11, 2002 SIP revision reduced the time for the Department's action from 240 days to 180 days.[7] Section 165(c) of the CAA requires that any completed PSD permit application shall be granted or denied no later than one year after the date of filing of such completed application. The reduction of time for the Department's action on a PSD permit application from 240 days to 180 days thus still complies with federal requirements to act on such a permit within one year after the date of filing of a completed application.

The April 11, 2002 SIP revision reduced the number of days within which the Department must take action upon a preconstruction permit application that is not subject to the PSD requirements of Part 74 from 180 days to 90 days. This reduction applies to both Part 79 NNSR and Part 72 MNSR permits. NMED has been implementing this reduction in time for review of NNSR permit applications for over 10 years. NMED has issued zero (0) new NNSR permits between 1995 and 2012.[8] Similarly, NMED has been implementing this reduction in time for the Department's review of Minor NSR permits for over 10 years. NMED has issued approximately 673 new MNSR permits between 1995 and 2012.[9] As previously discussed, the entire state of New Mexico is designated attainment for all pollutants, with the exception of PM_{10} and 1-hour ozone. The only area designated nonattainment for PM_{10} in New Mexico is Anthony, which is located in Dona Ana County, and the only area designated nonattainment for the 1-hour ozone NAAQS is Sunland Park, which is also located in Dona Ana County. We propose to find the reduction of time for the Department's review of NNSR and Minor NSR permit applications has therefore not interfered with attainment, reasonable further progress, or any other applicable requirement of the Act.

Section 207 of the current SIP also specifies the Department shall hold a hearing within 90 days upon receipt of a timely petition for hearing by a person who participated in a permitting action before the Department and is adversely affected by such permitting action. The April 11, 2002 SIP revision changed the number of days by which the Department must hold a hearing from 90 days to 60 days. Because this change expedites the time frame within which the Department must hold a hearing upon receipt of a petition by a person

[6] Subparts I, II, III, and V were approved by EPA on September 26, 1997 (62 FR 50518), effective November 25, 1997.

[7] We are only reviewing and proposing action on the revisions to Part 72 in this action. The underlying regulations and program in Part 74 were not included, and are substantively not required to be evaluated, in the SIP revisions EPA is evaluating in this rulemaking.

[8] Historical NNSR permit issuance data was provided via electronic email dated November 7, 2012, from Ted Schooley, NMED, to Ashley Mohr, EPA, Region 6.

[9] Historical new MNSR permit issuance data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

adversely impacted by a permitting action, this change is one that makes the current SIP more stringent. We propose to find the revisions to Section 207 comply with applicable federal requirements, including section 110(l) of the Act.

3. Submitted Revisions to Section 216—New Applicability Conditions and Requirements for Sources Located in Nonattainment Areas

The current SIP-approved Part 72 contains potentially applicable requirements for sources located in Nonattainment areas within the Section 216 provisions. New Mexico proposed non-substantive changes to Section 216 in the April 11, 2002 SIP revision submittal that include updates to formatting within the rule provisions to be consistent with formatting updates that were made throughout Part 72 and the NMAC. New Mexico also proposed changes to this section of Part 72 as part of the November 2, 2006 SIP revision submittal. These changes to Section 216 include the non-substantive changes to the rule language in Paragraphs (A)(1), (A)(2), and (B) to clarify that the requirements of this section are potentially applicable to both new sources and modifications of an existing source. This change does not change the applicability test or requirements of Section 216. The April 11, 2002 SIP revision also contained proposed changes to add Paragraphs (A)(3) and (C) to Section 216. The addition of these two sections add a requirement for specific stationary sources (i.e., landfills and grandfathered sources) that were not previously required to obtain a preconstruction NSR permit to submit an application for a permit under Part 72, including submittal of a modeling analysis to demonstrate compliance with the NAAQS. The April 11, 2002 revisions also incorporate a requirement that if those newly permitted sources could not show compliance with the NAAQS, the source would be required to make changes to the facility that would result in an overall net air quality benefit. These proposed revisions to Section 216 result in a more stringent SIP than currently approved. Therefore, we propose to approve these revisions to Section 216 into the SIP by the determination that they will not affect the ability of the Section, or Part 72 overall, to meet the federal requirements for SIP-approved permitting plans.

4. Submittal of New Section 220—Minor NSR General Permits

The current SIP-approved provisions of part 72 contain provisions for a Source Class Permit Streamlining program but issuance of such a permit required prior EPA approval. New Mexico adopted the new Section 220, which contains the general preconstruction permitting program, and submitted this addition in the May 29, 1998 SIP submittal.[10] In New Mexico's proposed general permitting program, the underlying provisions related to the general permitting program are adopted into the state's regulations and are submitted for approval into the New Mexico SIP by EPA. As a result, if Section 220 is approved by EPA into the SIP, the general permits that are developed and issued by the NMED in accordance with the procedures and requirements of Section 220 automatically become part of the SIP, and therefore, are federally enforceable on the basis that they meet the SIP-approved requirements of the general construction permits program in Section 220.

Paragraph A of Section 220 includes the requirements related to the procedures to develop and issue a general permit. As required in 20.2.72.220(A)(1) NMAC, a general construction permit developed by NMED must cover numerous similar sources. Sources allowed to register for coverage under a general permit must be homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements. These requirements satisfy the Federal requirement 40 CFR 51.160(a) that the SIP has legally enforceable procedures that enable the NMED to determine whether construction or modification will result in a violation of a control strategy or interfere with attainment or maintenance of a national standard in New Mexico or a surrounding state. Section 20.2.72.220(A)(2) NMAC requires each general permit to describe which sources may qualify to register under the general permit, which satisfies the requirement of 40 CFR 160(e) which provides that the SIP must identify the types and sizes of facilities that will be subject to review. NMED has indicated in the SIP submittal that the permits developed and issued under the general construction permitting program are for Minor NSR sources.[11] 40 CFR 51.160 requires that the Minor NSR SIP revision submittal be enforceable. In particular, 40 CFR 51.160(a) requires that the SIP revision be enforceable in order to ensure that the issuance of the Minor NSR permit will not cause or contribute to a violation of any SIP control strategy and will not interfere with attainment and maintenance of the NAAQS. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency'' provides EPA's guidance for assessing whether a SIP revision submittal is sufficiently enforceable. We find that the new general construction permitting program meets the requirements of section 40 CFR 51.160(a), which requires that SIP revision submittals be enforceable. The submitted regulation specifically requires that a general permit include monitoring, record keeping and reporting (MRR) requirements appropriate to the source and sufficient to ensure compliance with the general construction permit. At a minimum, the general permit shall specify where the records shall be maintained, how long the records shall be retained and that all records or reports shall be made available upon request by the Department. The general permit also must contain sufficient terms and conditions to ensure that all sources operating under a general permit will meet all applicable requirements under the Federal Clean Air Act, e.g., NSPS, NESHAPS, and MACT, and all requirements of the SIP. Such a general permit is not allowed to cause or contribute to air contaminant levels in excess of any National or New Mexico Ambient Air Quality Standard. For these reasons, EPA finds that the submitted general construction permitting program will ensure attainment and maintenance of the NAAQS and will prevent violations of any of the New Mexico SIP's control strategies. Under this submitted new permitting program, the State is able to determine if there will be an adverse impact on air quality.

EPA has recognized, for certain classes of sources, that it is appropriate for states to establish enforceable

[10] The proposed general construction permitting program is similar to the Source Class Permit Streamlining program contained in 20.2.72.300—20.2.72.399 NMAC of the current New Mexico SIP. The key difference is that under the current SIP-approved Source Class Permit Streamlining program, each source class permit must be approved by EPA into the SIP; whereas, under the proposed Section 220 general construction permitting program, the underlying provisions for the permitting program are SIP approved and the individual general permits undergo public participation process similar to that required for a case-by-case NSR permit.

[11] Pages 77 and 78 of hearing transcripts for October 17, 1997 Environmental Improvement Board Public Hearing.

emission limits that serve to limit potential to emit through exclusionary rules that apply to certain source categories. *See,* Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS) entitled ''Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound Use,'' dated October 15, 1993; *See also,* Memorandum from John Seitz, Director, OAQPS entitled ''Approaches to Creating Federally-Enforceable Emission Limits,'' dated November 3, 1993. EPA also issued a guidance memorandum that provides guidance for addressing the minor source status under the Act for lower-emitting sources in eight source categories. *See,* April 14, 1998, Memorandum entitled, ''Potential to Emit (PTE) Guidance for Specific Source Categories'' (hereinafter the 1998 memoranda). It provides technical information useful in devising practicable enforceable potential to emit for small sources and identifies sources that are ''true minors.'' Although not an exclusionary rule, the practicable enforceability criteria in the guidance memoranda serve as a way to measure whether the submitted general construction permitting program is practicably enforceable and therefore can ensure that issuance of the Minor general NSR permit will not cause or contribute to a violation of any SIP control strategy and will not interfere with attainment and maintenance of the NAAQS. The submitted program clearly identifies the category of sources that qualify for coverage. The submitted program provides that a source notify the State of its coverage under the program by submitting a complete application to register. The NMED shall grant registration to a source only if it submits a complete application and meets the terms and conditions of the general permit. The NMED may grant or deny an application.

Based on the requirements contained in Section 220 and further clarification provided by NMED, a general permit could not be developed for use by a Major NSR source.[12] The state's implementation of the general permitting program since the state adopted the Section 220 provisions is consistent with the fact that the general permitting program is for Minor NSR sources only. Each of the general construction permits that New Mexico has issued in accordance with Section 220 includes facility-wide annual emission limits that are less than PSD permitting thresholds. In addition, Paragraph A of Section 220 includes provisions that specify what requirements must be met for a general permit to be issued under Section 220, including requirements that the permit contain sufficient terms and conditions, along with sufficient monitoring, record keeping, and reporting requirements, to assure that sources authorized via the general construction permit will meet all applicable requirements under the Act, including PSD and NNSR. Since these major NSR permitting programs require source-specific evaluations as part of the permitting process, a general permit could not be developed to authorize a major NSR source. The general permitting program was adopted as a Minor NSR preconstruction permitting program, and NMED's historical implementation since adoption of Section 220 is consistent with its intended applicability to Minor NSR sources only.

The provisions contained in Paragraph A of Section 220 also address public notice requirements for issued general permits. 20.2.72.220(A)(1) NMAC requires that prior to issuance, each general construction permit must undergo the same public notice as that required for case-by-case permits in Section 206. Section 206 public notice requirements are discussed in more detail in Section III.B.5 of this preamble. Paragraph B of Section 220 contains procedural requirements that must be met if NMED wishes to modify an existing general construction permit. These modifications are required to undergo an additional public notice and must include a transition schedule that addresses how and when sources that are registered under the existing general construction permit will be transitioned to the requirements contained in the modified general construction permit.

Together with Paragraph A, we propose to find the provisions of Paragraph B contain requirements that satisfy the requirements contained in 40 CFR 51.160, 51.161, 51.163 related to a permitting program having legally enforceable procedures, making information publicly available, and having administrative procedures in place to operate the program consistent with the previous requirements. The addition of Section 220 also does not interfere with the Part 72 construction permits program ability to meet requirements in 40 CFR 51.162 and 51.164 that are applicable to Minor NSR programs, since the addition does not impact the identification of the responsible agency or the stack height procedures.

Because the revisions to incorporate the general permitting program under Section 220 would add an alternative Minor NSR permitting approach to the preconstruction permitting program, these proposed revisions must also be evaluated to determine if they will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. This evaluation is included in the following section of this preamble.

a. 110(l) Analysis for Section 220

The provisions in Section 220 establish a general preconstruction permitting program that allows NMED to develop and issue general permits. Minor NSR sources may seek authorization under these general permits in lieu of case-by-case preconstruction permits if they meet the requirements of the general permitting program and the specific requirements of the general construction permit, itself. As required by the provisions of Section 220, a general construction permit issued under Section 220 must contain terms and conditions that assure that sources authorized via the general construction permit will meet all applicable requirements under the federal act (e.g., PSD, NSPS, NESHAP) and will not cause or contribute to an exceedance of the NAAQS.[13] As stated in the May 29, 1998 SIP submittal supporting documentation, a general construction permit will contain more conservative permit conditions and more stringent requirements since the general permit has to be protective of all applicable state and federal requirements for each source that may seek authorization via the general construction permit. Therefore, the general construction permits developed and issued by NMED are likely to contain more stringent permit conditions for a given source than would be included in a case-by-case permit issued for that same source.

Section 220 also identifies procedures for existing general construction permits to be modified by NMED. This modification procedure allows NMED to update the general permit conditions if they determine that more stringent conditions are necessary or to account for new state or federal requirements. Under the general preconstruction permitting program established in Section 220, each source registration under a general permit requires review and approval by NMED prior to

[12] Clarification of Intent for Section 220 of 20.2.72 NMAC—Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

[13] 20.2.72.220(A)(2)(c)(1) NMAC.

construction, as well as, a separate public notice of each source registration. The public notice provisions require the source to notify the public that the source is seeking authorization under a general construction permit. NMED has been utilizing the general preconstruction permitting program based on the provisions in Section 220 since the state adoption of those provisions in 1998 without any indication that the implementation of this Minor NSR program has interfered with attainment or reasonable further progress.

Based on the reasons discussed above, we do not believe that the addition of the general preconstruction permitting provisions contained in Section 220 will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. Our evaluation of the SIP revision submittals related to Section 220, which are under review in this action, demonstrates compliance with section 110(l) of the CAA and provides further basis for proposed approval of this SIP revision.

5. Submitted Revisions to Section 206—Public Notice and Participation for Minor NSR

Prior to the revisions contained in the April 11, 2002 SIP submittal, NMED under existing SIP-approved Section 206 was required to publish in a newspaper of general circulation in the area closest to the location of the source public notice of the permit application submitted under part 72 and the Department's preliminary determination for a single 45-day comment period. The proposed revisions to Section 206 revise the public notice procedures so that it becomes a two-step process, whereas the current SIP public notice procedure is a one-step process. Under the submitted Section 206 revised provisions, NMED publishes in a newspaper of general circulation in the area closest to the location of the source public notice of the permit application. The public would then have 30 days to express written interest in the permit application, whereas under the current SIP-approved provisions the public has 45 days to comment on the permit application and the Department's preliminary determination.

If NMED does not receive any written expressions of interest from the public on the permit application during the 30-day public notice of the permit application, the Department will take action to issue or deny the permit. However, if any person expresses interest in writing in the permit application during the 30-day public notice period, NMED shall notify these interested persons of the date and location that the Department's Analysis was or will be available. These interested people and any other member of the public then have 30 days to submit written comments on the Department's Analysis. The NMED cannot issue the permit until at least 30 days after the Department's Analysis is available for review. As clarified in the Secretary's November 7, 2012 letter, the second 30-day period is triggered for members of the public to submit written comments on the Department's Analysis, when the State posts notice of the availability of the Analysis onto its Web site.[14]

Additionally, New Mexico has submitted a SIP revision to the language within 20.2.72.206(A)(7) NMAC requiring public notices to be sent to the Region 6 EPA office, adding language directing public notices be sent if requested by EPA. 40 CFR 51.161(d) requires that a state send a copy of all public notices to EPA via the Regional Office, without qualifying whether a request by EPA is necessary. To ensure that all public notices are received by EPA pursuant to 40 CFR 51.161(d), Region 6 has formally requested copies of each public notice be provided to EPA.[15] Therefore, NMED will provide a copy of all public notices for construction permits to EPA, and we propose to approve 20.2.72.206(A)(7) NMAC as consistent with the federal requirement in 40.CFR 51.161(d).

a. 110(l) Analysis for Section 206

As noted, the proposed revisions to Section 206 do result in a reduction in the length of the public notice period from 45 days to 30 days. This public notice period, while reduced from the current SIP-approved requirements, is equivalent to the federal public participation minimum public comment period requirements, which requires a 30-day period for submittal of public comment. The proposed revisions also require a person to comment in writing on the permit application before any member of the public can comment on the Department's Analysis. We believe that this is a minimal burden placed on the public to express written interest on the permit application in order to have the opportunity to comment on the Department's Analysis. This additional requirement does not undermine federal public participation requirements. Also, the change from 45 days to 30 days for public review and comment, while a reduction, also meets federal public participation minimum public comment period requirements. Therefore, we propose to approve these revisions into the SIP by determining that they will not interfere with the ability of the New Mexico SIP to meet the applicable federal public participation requirements, nor will they violate the requirements of CAA section 110(l).

6. Submittal of New Section 219—Permit Revisions for Minor NSR

The current SIP-approved Permit Revisions provisions under Section 202 include general requirements for sources seeking permit revisions to submit a revision request to NMED, which was to include a description of the proposed changes and the reasons for those changes. The current SIP requires that permit revisions with associated increases in permitted emission limits are processed in accordance with public notice, review, and hearing procedures contained in Sections 206 and 207 of Part 72. As part of the submitted May 29, 1998 SIP revisions, the Permit Revisions provisions were moved to Section 219 and were revised to include three different tiers of revisions: Administrative, Technical, and Significant. These Permit Revisions provisions were subsequently revised and submitted in the April 11, 2002 and April 25, 2005 SIP submittals. The tiered permit revision process established in the May 29, 1998 SIP revision submittal was developed by New Mexico through a permitting Task Force that consisted of NMED staff and members of the public, including representatives from industry and environmental groups. The Task Force identified types of Minor NSR permit revisions that should qualify for streamlined permitting based on their anticipated negligible or insignificant environmental impacts and established the proposed tiered permit revisions process for Minor NSR permit revisions.

The public participation requirements for each of the three new types of permit revisions were also changed in the May 29, 1998 SIP revision submittal. The associated public notice requirements are one of the main differences between the separate tiers of permit revisions included in Section 219. The Federal requirements for Minor NSR permit

[14] Public Notice for Minor Source New Source Review letter dated November 7, 2012, from Dave Martin, Cabinet Secretary, NMED, to Mr. Ron Curry, Regional Administrator, EPA, Region 6.

[15] Copies of public notices were requested via letter from Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6 to Mr. Richard Goodyear, PE, Bureau Chief, NMED on September 7, 2012. NMED responded to EPA's request via letter dated September 13, 2012 from Mr. Goodyear, NMED, to Mr. Diggs, EPA, and agreed to provide copies of the notices to EPA. Copies of these letters and all others referenced in this proposal are in the docket for this rulemaking.

applications and public notice requirements are at 40 CFR 51.160 and 161. These requirements establish the minimum requirements for approvability of a state's Minor NSR SIP, which a state develops to prevent construction and modification of stationary sources from interfering with an area's ability to achieve compliance with a NAAQS.

These requirements generally require 30-day public review for all sources subject to the Minor NSR; however, these requirements also allow a State to identify the types and sizes of facilities, buildings, structures, or installations, which will require full preconstruction review by justifying the basis for the State's determination of the proper scope of its program.[16] Importantly, our decision to approve a State's scope of its Minor NSR program must consider the individual air quality concerns of each jurisdiction, and therefore will vary from state to state.

New Mexico's submitted rules create tiered, public notice requirements for the three types of permit revisions. New Mexico justified its approach for permit revision applications using *de minimis* principles like those established in *Alabama Power.*[17] A Significant permit revision will have the same public notice requirements as an application for a new minor source. The submitted New Mexico rules generally provide that all new Minor NSR permit applications and all Minor NSR Significant permit revision applications will go through public notice consistent with federal requirements at 40 CFR 51.160 and 51.161. Under the submitted rules, Administrative permit revisions do not have any associated public notice requirements. Meanwhile, the submitted Technical permit revisions require that the applicant conduct a reduced public notice, as compared with the full notice required for new Minor NSR permits and Significant permit revisions. EPA recognizes a State's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS. As documented in the State's SIP revision submittal and subsequent submission of supporting information, New Mexico justified the scope of its regulatory program, and thus the permit applications for which full public review is necessary, using *de minimis* principles like those established in *Alabama Power* to identify permit revisions that are not environmentally significant.

EPA's evaluation of the environmental significance of each permit revision tier and its associated public participation requirements are discussed in the following subsections and the TSD. The following subsections and TSD also discuss the State's analysis and supporting documentation regarding how the permitting actions qualifying as Administrative and Technical permit revisions were chosen and why the Department finds that these permit actions qualify for a more streamlined permitting process because of their environmental insignificance.

a. Administrative Permit Revisions

NMED established Administrative permit revisions that are limited to those actions that are listed below that do not have any associated increases in permitted emissions, and a permittee may obtain such a revision for an existing source without undergoing preconstruction permitting requirements under Part 72. Administrative permit revisions do not have applicable filing or permit fees under Part 75 and are also not subject to the public notice requirements contained in either Section 203 or Section 206. Administrative permit revisions are limited to the following permit actions that are considered to be administrative changes:

- Correction of typographical errors,
- Change in administrative information (e.g., change in owner, facility address, or contact phone number),
- Incorporation of the retirement of permitted source or the closing of a facility,
- Incorporation of the deletion of a proposed source(s) that was not constructed or will not be built, or
- Incorporation of Section 202 Paragraph B exempted sources.[18]

Because these permit revisions do not have any associated increases in permitted emissions, they would not be required to undergo the preconstruction permitting requirements under Part 72 to receive a permit revision. Under the new submitted SIP rule, Administrative permit revisions now require a certified written notification of the revision be submitted by the applicant to NMED. Administrative revisions become effective upon receipt of the notification by NMED. NMED is not required to reissue the permit to incorporate an Administrative permit revision. The revised SIP rule is more stringent than the current SIP with respect to requiring certified written notification of the Administrative revision to be submitted by the applicant to NMED.

Under the proposed SIP revisions, Administrative permit revisions are exempt from all Minor NSR public participation requirements under Part 72. As documented in the SIP revision submittals, the permit revisions allowed under the Administrative revision provisions are limited to those permit changes that are administrative in nature and do not result in a change to any permit term or condition and do not have any associated increases in permitted emission rates. Therefore, the Administrative permit revisions are truly *de minimis* in nature, and we propose to find that New Mexico provided an adequate demonstration and justification to show that their proposed Administrative permit revisions provisions meet 40 CFR 51.160(e) and 161.

b. Technical Permit Revisions

NMED also established Technical permit revisions in the proposed SIP revisions that include the following changes to a permit:

- Incorporate changes to monitoring, recordkeeping, or reporting requirements that do not reduce the enforceability of the permit,
- Incorporate the addition of permit conditions on sources that existed on August 31, 1972, and have been operated regularly since,
- Like kind replacement of permitted equipment that meets the specific requirements listed in 20.2.72.219(B)(1)(d) NMAC,
- Incorporate terms and conditions in the permit for the purpose of reducing the potential emission rate of a unit or source (e.g., cap on hours or throughputs),
- Incorporate addition of new equipment with potential emission rate no more than 1 pound per hour (4.38 tons per year, assuming continuous operation for 8,760 hours per year) for any NAAQS pollutant or any VOC,
- Revision of permitted emission limit based on initial compliance testing results that meets the specific requirements listed in 20.2.72.219(B)(1)(e) NMAC, and
- Incorporate the addition of, or substitution of, a different type of air

[16] For example, under the federal Tribal NSR regulations, EPA did not require permits for sources with emissions below ''*de minimis''* levels, and for sources in ''insignificant source categories''. 76 FR at 38755. In sum, under these Tribal NSR regulations, some sources are not required to obtain permits, and have no public notice requirements.

[17] See *Ala. Power Co.* v. *Costle,* 636 F.2d 323 (DCCir. 1979).

[18] The incorporation of the Paragraph B exempted sources into an existing permit is an administrative action and does not change the exempt status of these sources. These Section 202 Paragraph B exempt sources remain exempt from Minor NSR permitting requirements and their incorporation into an existing permit does not result in an increase in permitted emission rates or change a term or condition of the existing permit.

pollution control equipment with an increase in potential emission rate no more than 1 pound per hour (4.38 tons per year, assuming continuous operation for 8,760 hours per year) for any NAAQS pollutant or total VOCs.

The Technical permit revisions established under the proposed New Mexico SIP revisions are not required to meet the full public participation requirements under Part 72.[19] Under the new submitted Section 219, Technical permit revisions, like new permit applications and Significant permit revision applications, the applicant still is required to publish a newspaper notice of general circulation in each county in which the source is proposing to construct or modify. This newspaper notice shall contain the following:

1. The applicant's name and address, together with the names and addresses of all owners or operators of the facility or proposed facility;

2. The actual or estimated date that the application was or will be submitted to the Department;

3. The exact location of the facility or proposed facility;

4. A description of the process or change for which a permit is sought, including an estimate of the maximum quantities of any regulated air contaminant the source will emit after proposed construction is complete or permit is issued;

5. The maximum and standard operating schedules of the facility after completion of proposed construction or permit issuance; and

6. The current address of the Department to which comments and inquiries may be directed.

The applicant also is still required to provide certified mail notices of the proposed Technical permit revision to nearby municipalities, Indian tribes, and counties.[20] Public participation requirements for Technical permit revisions also allow for NMED to hold a public meeting in response to significant public interest in the proposed permit revision. What is no longer required is that the applicant (1) provides certified mail notices to owners of all properties within specified distances; (2) post signs of the notice in four publicly accessible places; or (3) submit a public service announcement to at least one radio of TV station that serves the area where the source is located. NMED is not required to publish a newspaper notice that includes its preliminary intent to issue the permit if the construction or modification requested in the application will comply with air quality requirements, including ambient standards.

The applicant is required to file a certified written notification of the proposed Technical revision to NMED. NMED has 30 days after the receipt of a complete application to approve or deny the Technical permit revision or inform the applicant that the Technical permit revision request must be ''bumped up'' and resubmitted as a Significant permit revision requiring the revision to undergo full public participation. The Technical permit revision becomes effective upon written approval from NMED, and NMED is required to attach the Technical permit revision to the existing permit.

While the Technical permit revisions are exempt from a portion of the public participation requirements, within the scope of New Mexico's revised rules, the thresholds do not affect any part of the technical review of these permit revision applications, including a requirement that the applicant demonstrate that the proposed modification will not result in allowable emissions that could contribute to an exceedance of the NAAQS.

New Mexico determined that revisions allowed under the Technical permit revisions provisions were limited to permit revisions that either have no associated increases in emissions or associated emissions increases that are insignificant. The first four permit actions listed previously that qualify as Technical permit revisions do not have any associated increases in permitted emission rates. Therefore, similar to the Administrative permit revisions, these four types of Technical permit revisions are truly *de minimis* in nature. Therefore, similar to our determination for Administrative permit revisions, we propose to find that New Mexico provided an adequate demonstration and justification to show that these four types of Technical permit revisions provisions that are excluded from the full public participation requirements are environmentally insignificant and therefore satisfy the provisions of 40 CFR 51.160(e) and 161. The three remaining types of Technical permit revisions are limited to permit revisions that are expected to be environmentally insignificant, either because of the limits placed on the associated emissions increases or because the limited subcategory of permit revisions, which represent a small subset of the permitting universe that are allowed by the Technical revisions. Two of the remaining Technical revisions are limited to permit actions that have associated increases in permitted emission rates less than 1 pound per hour, which equates to 4.38 tons per year assuming continuous operation. As documented in the SIP revision submittal, an emissions increase of this small magnitude is not expected to result in a significant environmental impact. The last Technical permit revision with associated increases in permitted emissions allows an applicant to request up to a 10 percent increase in permitted emission rates as a result of initial compliance testing. Such adjustments in permitted emission rates are limited to very specific permit actions, and the applicant is required to, as part of the Technical permit revision request, supply a demonstration that the requested increase will not trigger additional requirements under any Part of the NMAC, including Part 74—PSD, and will not result in allowable emissions that could contribute to the violation of any NAAQS. The provisions in Section 219 result in the scope of permit revisions that would qualify for the 10 percent increase allowance to be limited to a small portion of permitting actions. New Mexico has reviewed the 73 Technical permit revisions issued since 2009, and none of these Technical permit revisions were issued under the 10 percent increase allowance provisions contained in 20.2.72.219(B)(1)(e) NMAC.[21] Therefore, based on the insignificant environmental impacts associated with the Technical permit revisions found in 20.2.72.219(B)(1)(b) NMAC and 20.2.72.219(B)(1)(f) NMAC and the

[19] Technical permit revisions are not subject to public notification requirements under Paragraphs 1, 4 and 5 of Subsection B of 20.2.72.203 NMAC, and 20.2.72.206 NMAC. However, applicant's requesting a Technical permit revision must still meet the public notice requirements contained in Paragraphs 2 and 3 of 20.2.203 NMAC.

[20] 20.2.72,203(B)(1) and (2) NMAC require that the applicant's public notice be: (1) Provided by certified mail, to the owners of record, as shown in the most recent property tax schedule, of all properties: (a) Within one hundred (100) feet of the property on which the facility is located or proposed to be located, if the facility is or is proposed to be located in a Class A or Class H county or a municipality with a population of more than two thousand five hundred (2500) persons; or (b) within one-half (½) mile of the property on which the facility is located or is proposed to be located if the facility is or will be in a county or municipality other than those specified in Sub-paragraph (a) of Paragraph 1 of Subsection B of 20.2.72.203 NMAC; and (2) provided by certified mail to all municipalities and counties in which the facility is or will be located and to all municipalities, Indian tribes, and counties within a ten (10) mile radius of the property on which the facility is proposed to be constructed or operated.

[21] Additional historical Technical permit revisions data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

limited scope of permitting actions allowed under the Technical revision found in 20.2.72.219(B)(1)(e) NMAC, we propose to find that New Mexico provided an adequate demonstration and justification to show that exclusion of these remaining three types of Technical permit revisions provisions from the full public participation requirements are environmentally insignificant and therefore satisfy the provisions of 40 CFR 51.160(e) and 161.

c. 110(l) Analysis for Technical Revisions

As noted, the proposed revisions to add Section 219 and establish a tiered permit revisions approach for Minor NSR modifications result in a reduction of public notice requirement for a portion of the modifications listed as Technical permit revisions. Similar to the Administrative permit revisions, most of the permit actions that qualify as Technical permit revisions do not have associated increases in permitted emission limits. Under the new provisions found in Section 219, these Technical permit revisions are required to conduct a reduced public notice that requires the applicant provide notice via certified mail to specific persons and via a published newspaper notice. This public notice is reduced compared to the public notice required for Significant permit revisions, but is more stringent than the current SIP requirements for revisions with no associated increases in permitted emissions, which include a requirement for public notice only for those permit revisions that include an increase in a permitted emission limit. Therefore, for those Technical permit revisions which do not have associated increases in permitted emission limits, the proposed revisions to the New Mexico SIP result in additional public notice requirements that are not included in the current SIP.

The three permit actions identified as Technical permit revisions in 20.2.72.219(B)(1)(b) NMAC, 20.2.72.219(B)(1)(e) NMAC, and 20.2.72.219(B)(1)(f) NMAC do include associated increases in permitted emission limits. Two of these permit revisions allow only for small increases in permitted emission rates (1 pound per hour, which corresponds to 4.38 tons per year assuming continuous operation). The remaining permit action that qualifies as a Technical permit revision having an associated increase in emission limitations described in 20.2.72.219(B)(1)(e) NMAC has other requirements that must be met by the permit revision action that ensure that the revision will not contribute to a NAAQS violation. For example, the applicant must demonstrate that the increase in permit emissions limits being proposed as a result of stack testing will not result in a new allowable emission limit in the permit that would contribute to a violation of the NAAQS. These revisions, like all other Technical permit revisions, will undergo review by NMED during which the Department will confirm that the revision meets the applicable requirements of Section 219 to qualify for a Technical permit revision and determine if the revision should be issued, denied, or ''bumped up'' to a Significant permit revision. Since Technical permit revisions have a required public notice component, the public will be notified of the proposed revision and will have the opportunity to request a public meeting if they have significant questions or concerns regarding the proposed permit revision.

Since adopting the tiered permit revisions approach in 1998, New Mexico has issued 2,055 Administrative permit revisions, 234 Technical permit revisions, and 482 Significant permit revisions in accordance with the Section 219 provisions. NMED's implementation of the tiered permit revision program, which allows for reduced public notice for Administrative and Technical revisions, has not resulted in a measured exceedance of the NAAQS and has not shown any interference with reasonable further progress in the state.[22] Furthermore, a review of the Technical permit revisions issued in the last three calendar years (2009–2011) shows that the total annual increases in permitted emissions is less than 7 tons per year for all NAAQS pollutants for each of the years.[23] In fact, most of the pollutants show no change or an overall decrease in annual emissions as a result of the Technical permit revisions issued during a given calendar year. This historical look back of the New Mexico preconstruction permitting program is consistent with our expectation that the tiered permit revision program and associated tiered public notice requirements will not have adverse impacts on air quality that interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

Based on the reasons discussed above, we do not believe that the addition of Technical permit revisions to the tiered approach in Section 219, will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. We believe that New Mexico provided a demonstration that adequately justifies the scope of activities that require full review with public participation, because it excludes Technical permit revisions that have associated environmental impacts that are either *de minimis* or environmentally insignificant, using *de minimis* principles like those established in *Alabama Power* to identify permit revisions that are not environmentally significant. Our evaluation of the SIP revision submittals related to Section 219, which are under review in this action, demonstrates compliance with section 110(l) of the CAA and provides further basis for proposed approval of this SIP revision.

d. Significant Permit Revisions

Significant revisions include those modifications made at a stationary source that either prior to or following the modification would result in a facility-wide potential emission rate for any regulated air contaminant greater than 10 pounds per hour or 25 tons per year, given that the modification does not qualify as a Paragraph A, B, or C exemption under Section 202 or an Administrative or Technical Revision under Section 219. Significant permit revisions must follow the same permitting procedures and meet the same permitting requirements (e.g., payment of applicable fees, completion of public notice) as those required for newly issued Minor NSR permits. The permitting requirements for Significant permit revisions are no more or less stringent than those required for permit revisions with an associated increase in permitted emission rates under the currently approved SIP. Significant permit revisions are subject to the same submitted public participation requirements as those required for initial Minor NSR permits, that we are proposing to approve. Because the associated public participation requirements do not undermine the SIP revision's ability to meet section 110(l) or any other applicable requirement of the Act, we propose to approve Significant permit revisions under Section 219 into the New Mexico SIP.

[22] Historical permit revisions data provided via Clarification of Exemptions in Section 202 of 20.2.72 NMAC—Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

[23] Additional historical Technical permit revisions data was provided via electronic mail dated November 2, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

7. Submitted Revisions to Section 202—New Exemptions for *de Minimis* Sources and Activities From Minor NSR Permitting Requirements

As required by 40 CFR 51.160(e), a NSR program, including a Minor NSR permitting program, must have procedures in place that identify the ''types and sizes of facilities, buildings, structures, or installations which will be subject to review.'' As part of the current SIP-approved Part 72 regulations, all stationary sources with emissions in excess of the following emissions thresholds are required to obtain a construction permit: (1) Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard; (2) Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification; and (3) Any person constructing a stationary source which has a potential emission rate for lead greater than 5 tons per year or modifying a stationary source which either prior to or following the modification has a potential emission rate for lead greater than 5 tons per year.[24]

Therefore, the current New Mexico SIP does exempt constructed stationary sources and modifications to an existing stationary source with potential emissions below these thresholds from the Minor NSR permitting requirements. These emissions based exemptions are the only type of exemptions contained in the current SIP for the Minor NSR permitting program.

As part of the May 29, 1998 SIP submittal, Paragraphs A, B, and C were added to Section 202 containing new exemptions from the Minor NSR permitting requirements in Part 72. These newly proposed exemptions are emission source or activity based exemptions. The provisions contained in these new Paragraphs include a listing of the specific types and sizes, where applicable, of sources and activities that would be exempt from all or a portion of the preconstruction permitting requirements. Therefore, the sources and activities included in Paragraphs A, B, and C can be commenced or changed without obtaining a Minor NSR permit or Minor NSR permit revision. The following subsections describe the sources and emission activities listed in each Paragraph and the permitting requirements they are exempted from in further detail. Because these Paragraphs add source and activity specific exemptions from preconstruction permitting beyond the exemptions evaluated for and included in the current New Mexico SIP, the following subsections also evaluate each new Paragraph to determine if the proposed exemptions will interfere with attainment or reasonable further progress or any other applicable requirement of the Act pursuant to section 110(l).

a. Paragraph A Exemptions

Paragraph A includes a list of exempted emission sources and activities EPA has historically approved into state SIPs, finding them to have *de minimis* environmental impacts due to their trivial, insignificant nature.[25] These emission sources and activities include, but are not limited to, those relating to office activities such as photocopying, residential activity such as fireplaces and barbecue cookers, food service such as cafeteria activity, and maintenance of ground activities such as lawn care and pest control (see our TSD for a complete list of the Paragraph A exemptions).

b. 110(l) Analysis for Paragraph A Exemptions

NMED provided a summary of anticipated impacts on ambient air quality for the emission sources and activities included in the Paragraph A exemptions. For all sources on this list, NMED indicated that impacts are expected to be non-existent, negligible/insignificant, or less than emissions from other sources that are currently unregulated.[26] NMED's determination of anticipated impacts for these sources is consistent with our understanding of the environmental insignificance of emissions anticipated from these small emission sources and activities. In addition, NMED has been carrying out the MNSR permitting program based on the codification of their permitting policy since the adoption of the Paragraph A permit exemptions in 1998 without any indication that these permit exemptions have interfered with attainment or reasonable further progress. Specifically, the implementation of the Paragraph A exemptions has not resulted in a measured exceedance of the NAAQS. The historical monitoring data is consistent with the anticipated impacts from these types of emission sources and activities being environmentally insignificant along with the fact that the sources that qualify for exemptions from Minor NSR permitting requirements make a small portion of the state's emission sources. Based on the current number of active emission sources in the state of New Mexico, NMED estimates that the portion of emission sources that qualify for exemptions under Section 202, including the Paragraph A exemptions, accounts for less than ten percent (10%) of the total number of active emission sources in the state.[27] Based on the supporting information and historical look back regarding these types of emission source and activity specific exemptions in other SIPs, EPA proposes to approve Paragraph A of Section 202 into the New Mexico SIP.

c. Paragraph B Exemptions

Paragraph B of Section 202 includes the addition of a second list of source and activity specific permit exemptions for the Minor NSR permitting program. Like the Paragraph A emission sources, the Paragraph B sources and activities are exempted from the Minor NSR permitting requirements. However, facilities are required to include a listing of all Paragraph B exempt sources in their permit application. This inclusion in the permit application serves as a notification to NMED that a Paragraph B exempt source is located at a facility. NMED can then, based on the notification, verify that the source qualifies for the permit exemption. For cases where a Paragraph B source is being added to a permitted facility, the owner or operator is required to submit a request to NMED requesting an Administrative revision to the permit. This revision request also serves as a

[24] The New Mexico SIP at 20.2.72.200(A)(1), (2), and (5) specify the emissions thresholds that trigger minor preconstruction permitting requirements.

[25] *See e.g.* Montana Air Quality Permits—General Exclusions (76 FR 40237, July 8, 2011), West Virginia Table 45–13B De Minimis Sources (72 FR 5932, February 8, 2007).

[26] Supporting documentation contained in May 29, 1998 SIP submittal, specifically the direct testimony and public hearing transcript documents. Additional clarification also provided via Clarification of Exemptions in Section 202 of 20.2.72 NMAC—Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6.

[27] Information regarding the portion of current active emission sources that qualify for the source and activity specific exemptions under Section 202 was provided via electronic mail dated September 18, 2012, from Kerwin Singleton, NMED, to Ashley Mohr, EPA, Region 6.

notification that a Paragraph B source is located at a facility and provides NMED an opportunity to verify that the source qualifies for the claimed exemption. Administrative revisions are subject to the revised requirements under Section 219 and were further discussed in Subsection III.B.6.a of this preamble.

The list of exempt sources and activities included in Paragraph B also includes operational limitations for most of the emission sources, which serve to minimize the potential impacts from these sources and activities on ambient air quality. The following is a listing of the Paragraph B exemptions, including any operational limitations contained in the Section 202 provisions:

1. Fuel burning equipment which is used solely for heating buildings for personal comfort or for producing hot water for personal use and which:

a. Uses gaseous fuel and has a design rate less than or equal to five (5) million BTU per hour; or

b. Uses distillate oil (not including waste oil) and has a design rate less than or equal to one (1) million BTU per hour; [28]

2. VOC emissions resulting from the handling or storing of any VOC if:

a. Such VOC has a vapor pressure of less than two tenths (0.2) PSI at temperatures at which the compound is stored and handled; and

b. The owner or operator maintains sufficient record keeping to verify that the requirements of Sub-paragraph (a) of this paragraph are met;

3. Standby generators which are:

a. Operated only during the unavoidable loss of commercial utility power;

b. Operated less than 500 hours per year; and

c. Either are:

i. The only source of air emissions at the site; or

ii. Accompanied by sufficient record keeping to verify that the standby generator is operated less than 500 hours per year;

4. The act of repositioning or relocating sources of air emissions or emissions points within the plant site, but only when such change in physical configuration does not increase air emissions or the ambient impacts of such emissions; [29]

5. Any emissions unit, operation, or activity that has a potential emission rate of no more than one-half (½) ton per year of any pollutant for which a National or New Mexico Ambient Air Quality Standard has been set or one-half (½) ton per year of any VOC. Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of this exemption;

6. Surface coating of equipment, including spray painting, roll coating, and painting with aerosol spray cans, if:

a. The potential emission rate of VOCs do not exceed ten (10) pounds per hour;

b. The facility-wide total VOC content of all coating and clean-up solvent use is less than two (2) tons per year; and

c. The owner or operator maintains sufficient record keeping to verify that the requirements in Sub-paragraphs (a) and (b) of this paragraph are met;

7. Particulate emissions resulting from abrasive blasting operations, if:

a. Blasting operations are entirely enclosed in a building; and

b. No visible particulate emissions are released from the building.

d. 110(l) Analysis for Paragraph B Exemptions

Similar to that of the analysis provided for Paragraph A sources, NMED provided an analysis of the anticipated impacts on ambient air quality for the sources contained in Paragraph B of Section 202. Emissions estimates were provided for sources excluded under Paragraph B, Sub-paragraphs 1, 2, 4, 5, 6 and 7. All of the emissions estimates provided for the Paragraph B sources in the SIP submittal are less than 5.5 tons per year. NMED did not provide specific emissions information for standby generators, which are found under Sub-paragraph 3 of the Paragraph B exemptions in Section 202. However, standby generators only qualify for the Paragraph B exemptions if they are operated only during periods of unavoidable loss of commercial utility power and operate less than 500 hours per year. Paragraph B also requires that for those sources located at a site with other air emission sources, the facility must maintain records to verify operating hours below 500 hours. Based on the limitations on the annual hours of operation for the exempt standby generators, the expected annual emissions from these types of sources is expected to be of similar magnitude as those emissions resulting from the other Paragraph B exempted sources, i.e., less than 5.5 tons per year. The provisions under Section 202 also include similar operational restrictions for other exempted sources under Paragraph B that minimize the potential impacts from these exempted emission sources. As indicated in the state's analysis, the emissions resulting from the Paragraph B exempted sources are not expected to have adverse impacts on air quality. Furthermore, Section 202 requires that applicants report the presence of the Paragraph B exempted sources on permit applications so that the Department can verify that the sources meet the requirements under this Paragraph and qualify as a Paragraph B exempted sources, and thus will not adversely impact air quality.

In addition to the emissions estimates information provided by New Mexico, NMED has been carrying out the Minor NSR permitting program allowing for sources and activities listed in Paragraph B to be exempt from a portion of the preconstruction permitting requirements since the adoption of the permit exemptions in 1998 without any indication that these permit exemptions have interfered with attainment or reasonable further progress. As previously stated, NMED has reviewed the currently active emission sources contained in the state's permitting database to determine the number of documented sources that qualify for exemptions under Section 202. NMED has determined that Section 202 exempted sources, including Paragraph B sources, account for less than 10 percent of the total number of currently active emission sources. Based on the supporting information and historical look back data regarding these emission source and activity specific exemptions, EPA proposes to approve Paragraph B of Section 202 into the New Mexico SIP.

e. Paragraph C Exemptions

20.2.72.200(A)(3) NMAC of the current SIP requires sources that are subject to the applicable requirements of NSPS, NESHAP, or other emission limitation related requirements of another Part under Chapter 2 of NMAC to obtain a preconstruction permit under Part 72, regardless of the source's potential to emit. The submitted Paragraph C exemption under Section 202 exempts from Minor NSR permitting requirements under Part 72 these sources with potential emission rates less than 25 tons per year or 10 lb per hour if the only reason permitting under Part 72 is triggered is by the fact the source is subject to NSPS, NESHAP, or another Part under Chapter 2 of NMAC.[30] [31] This exemption only applies

[28] This activity generally is not considered construction or a modification by EPA and not required to obtain a minor NSR permit.

[29] This activity does not increase emissions and therefore generally is not considered construction or modification by EPA, requiring a minor NSR permit.

[30] The applicability test requiring the source to obtain a permit due to applicable emission limits under NSPS, NESHAP, or other Part under NMAC Chapter 2 is found in 20.2.200(A)(3) NMAC.

[31] To qualify for the Paragraph C exemptions, sources are also required to be included in a Notice

to the permitting applicability requirement found in 20.2.72.200(A)(3) NMAC. Therefore, in the event a source subject to NSPS, NESHAP, or other Part exceeds the permitting applicability thresholds, such as the thresholds for new Minor NSR sources found in 20.2.72.200(A)(1) NMAC or Minor NSR modifications found 20.2.72.200(A)(2) NMAC, then the source would be required to be subject to the Minor NSR permitting requirements under Part 72. New Mexico has also explicitly excluded the following NSPS and NESHAP sources from claiming the exemption under Paragraph C of Section 202: NSPS Subparts I and OOO and NESHAP Subparts C and D.

f. 110(l) Analysis for Paragraph C Exemptions

Under the current SIP at 20.2.72.200(A)(3) NMAC, sources subject to NSPS, NESHAP, or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant are subject to the Minor NSR permitting requirements in Part 72 regardless of whether their potential to emit is less than the 25 tons per year or 10 lb per hour permitting threshold in 200.2.72.200(A)(1) NMAC. The submitted Paragraph C of Section 202 includes an exemption for these sources from 20.2.72.200(A)(3) NMAC, and thus an exemption from the Minor NSR permitting requirements in Part 72, if they are included in a Notice of Intent under Part 73 or have met all applicable NSPS and NESHAP requirements, and have a potential to emit under 25 tons per year or 10 lb per hour. This exemption thus is less stringent than the requirements of the currently approved SIP, and must be evaluated to determine whether it would cause interference with attainment or reasonable further progress.

NMED indicated in testimony before the state Environmental Improvement Board that the intent of the current SIP approved rule was to use the Part 72 permit process as a mechanism for receiving notification of NSPS, NESHAP, or other regulated sources. NMED indicated in hearing testimony that it is unnecessary for such a source, as long as its potential to emit is under the 25 tons per year or 10 lb per hour Minor NSR permitting thresholds, to undergo the entire Part 72 permitting program if the Department's intent—notification—is achieved in another way. Based on the implementation of this preconstruction permitting requirement along with the other state and federal notification requirements applicable to these sources, the Department determined that the notification requirements found in Part 73, NSPS, or NESHAP are sufficient for these sources with potential emission rates less than 25 tons per year or 10 lb per hour. Therefore, requiring these sources to undergo the entire Part 72 preconstruction permitting process merely to obtain notification of the sources' existence is not necessary, as long as, the source complies with the Part 73, NSPS, or NESHAP notification requirements. EPA finds from NMED's supporting documentation nothing indicating these sources with potential emission rates less than 25 tons per year or 10 lb per hour were permitted for any reason other than notification.

Under the proposed Paragraph C exemption, these sources are only exempted from the Minor NSR permitting requirements in Part 72 and are still required to meet all other applicable requirements, including emissions limitations, testing, recordkeeping, and reporting requirements. Additionally, this exemption only applies to the 20.2.72.200(A)(3) NMAC applicability test, and the source must evaluate the permitting applicability requirements found in Sub-paragraphs (1), (2), (4), (5), and (6) under Paragraph A of Section 200. Based on NMED's testimony, EPA finds the Paragraph C exemption for these sources if their potential to emit is under Part 72's permitting thresholds for new Minor NSR sources and Minor NSR modifications codifies NMED's original primary purpose behind the current SIP—notification—without unnecessarily requiring these sources to undergo the full Minor NSR permitting requirements of Part 72 in order to meet that purpose. Because this exemption would apply only for those sources with a potential to emit below the currently SIP approved 25 tons per year or 10 lb per hour minor NSR permitting thresholds in Part 72, EPA proposes to find Paragraph C of Section 202 does not interfere with attainment or reasonable further progress and approve it into the New Mexico SIP.

g. Portable Source Relocation

The submitted Section 202 also contains provisions related to applicable permitting requirements for portable sources that are being relocated. These provisions were previously contained in Paragraph B of Section 202, but were moved to Paragraph D based on the additions of the source specific exemptions in the previous paragraphs. As part of the May 29, 1998 SIP revisions, clarifying language was added to provisions in Paragraph D regarding the requirements applicants must meet in order to relocate a permitted portable source without obtaining a permit revision. This SIP revision submittal also included the incorporation of additional recordkeeping and notification requirements that must be met in order for the portable source to relocate without obtaining a permit revision. As compared with the current SIP, EPA is proposing to approve these revised provisions as they include more stringent requirements for portable source relocation to meet and qualify for an exemption from preconstruction permitting.

h. Additional 110(l) Analysis—Historical Look Back

In addition to the referenced supporting documentation regarding the Section 202 exemptions included in the May 29, 1998 SIP revision submittal, NMED also provided data as part of a historical look back to document how many active emission sources have been reported as exempted sources, as well as how may active emission sources throughout the state may have qualified for exemptions from preconstruction permitting under Section 202 of Part 72. Within the current database of active emission sources, there are 493 subject items listed as ''Exempt'' within the database. These subject items may represent more than one emission source at a facility, if the facility has multiple units that are the same. In addition, the current active emission source database included additional emission units that may have qualified for a permit exemption under Section 202 and are not listed specifically as ''Exempt.'' NMED estimates that the total number of emission sources that may have qualified for exemptions from preconstruction permitting requirements is currently more than 2,000.[32] NMED has indicated that over the course of a decade since the state adopted the Permit Exemptions provisions in Section 202, the implementation of the Permit Exemptions provisions have not resulted in a measured exceedance of

of Intent filed under 20.2.73 NMAC (Notice of Intent and Emissions Inventory); or to have met the notification requirements to which they are subject under NSPS or NESHAP.

[32] Information regarding active emission sources and the current number of active sources that have claimed and/or may have qualified for exemptions under Section 202 was provided via Clarification of Exemptions in Section 202 of 20.2.72 NMAC—Construction Permits letter dated September 19, 2012 from Richard L. Goodyear, PE, Bureau Chief, NMED to Mr. Thomas Diggs, Associate Director for Air Programs, EPA, Region 6 letter dated September 19, 2012, from Mr. Richard Goodyear, NMED, to Mr. Thomas Diggs, EPA.

the NAAQS. EPA finds this data is consistent with the supporting documentation provided by New Mexico in the SIP submittal that stated that the anticipated impacts on air quality from the sources qualifying for exemptions from preconstruction permitting requirements under Section 202 are expected to be insignificant.

Based on the reasons discussed above, we do not believe that the addition of the permit exemptions contained in Section 202 for minor permit modifications will interfere with attainment or reasonable further progress or any other applicable requirement of the Act. Furthermore, it is important to note that all of the permit exemptions contained in Section 202 are limited only to the Minor NSR permitting requirements contained in Sections 200–299 of Part 72. These exemptions would not apply to any other applicable state or federal requirements. The source would still be required to meet all other applicable state and federal requirements, including major NSR permitting requirements, NSPS, NESHAPS or MACT requirements, and state toxics permitting requirements, if applicable. The source would also have to comply with any control requirements developed as part of a SIP control strategy, like the control requirements applicable to the PM_{10} nonattainment area in Anthony. Our evaluation of the SIP revision submittals related to Section 202, which are under review in this action, demonstrates compliance with section 110(l) of the CAA and provides further basis for proposing approval of this SIP revision.

IV. Proposed Action

EPA is proposing an approval of the SIP revisions to the Construction Permits regulation found in Part 72 that were submitted by New Mexico on May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006, and the letter dated November 7, 2012 from the Secretary. EPA is proposing this action in accordance with section 110 of the Act.

A. What are we not addressing in this proposed action?

EPA is only taking proposed action on the severable revisions to Part 72 contained in the five SIP revision submittals listed above that were submitted to us for review and incorporation into the New Mexico SIP. By severable, we mean that the portions of the SIP revision submittals relating to Part 72 can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions addressing Part 72. The following is a list of other revisions contained in the May 29, 1998, November 6, 1998, April 11, 2002, April 25, 2005, and November 2, 2006 submittals that are not being addressed in this proposed action:

- The November 6, 1998 submittal from New Mexico also contained revisions to correct errors in 20.2.70 NMAC—Operating Permits. Because 20.2.70 NMAC is outside the scope of the New Mexico SIP, the revisions to the Operating Permits provisions were not submitted as revisions to the state's SIP.
- The April 11, 2002 submittal from New Mexico also contained revisions to 20.2.73 NMAC—Notice of Intent and Emissions Inventory Requirements, 20.2.74 NMAC—Permits—Prevention of Significant Deterioration, 20.2.75 NMAC—Construction Permit Fees, and 20.2.79 NMAC—Permits—Nonattainment Areas. Portions of the submittal related to Parts 73, 74, 75, and 79 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.
- The April 11, 2002 submittal also included documentation related to an additional revision to 20.2.72 NMAC (filed with the State Records Center on February 28, 2001, effective March 30, 2001), which was submitted to EPA for informational purposes only and was not submitted for approval under the SIP. Therefore, the February 28, 2001 state adopted revisions to Part 72 are not included in this proposed action.
- The April 25, 2005 submittal from New Mexico also contained revisions to 20.2.66 NMAC—Cotton Gins, 20.2.73 NMAC—Notice of Intent and Emissions Inventory Requirements, and 20.2.75 NMAC—Construction Permit Fees. Portions of the submittal related to Parts 66, 73, and 75 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.
- The November 2, 2006 submittal from New Mexico also contained revisions to 20.2.3 NMAC—Ambient Air Quality Standards, 20.2.70 NMAC—Operating Permits, and 20.2.99 NMAC—Conformity to the State Implementation Plan of Transportation Plans, Programs and Projects. Portions of the submittal related to Parts 3, 70, and 99 have been or will be addressed in separate SIP revisions reviews and rule actions, as necessary.

V. 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. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this notice merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 13, 2012.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2012–28910 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2008–0124]

RIN 2127–AK13

Federal Motor Vehicle Safety Standards; Windshield Zone Intrusion

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Withdrawal of rulemaking.

SUMMARY: This document withdraws a rulemaking proposal to rescind Federal Motor Vehicle Safety Standard (FMVSS) No. 219, ''Windshield zone intrusion.'' The agency has determined that there are two ongoing regulatory developments that could influence vehicle designs by putting a premium on the use of lighter or less rigid materials. These two developments are U.S. fuel economy requirements and a global technical regulation aimed at reducing injuries to pedestrians struck by vehicles. As a result, the agency believes that vehicle designs with regard to the hood and windshield are in a state of change and that the implications of these developments should be better understood before deciding whether to rescind FMVSS No. 219.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. David Sutula, Office of Crashworthiness Standards, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–3273) (Fax: 202–366–2739).

For legal issues, you may contact Ms. Analiese Marchesseault, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–1723) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

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I. Background

FMVSS No. 219, ''Windshield zone intrusion,'' provides that a vehicle's hood must not enter a defined zone in front of the vehicle's windshield during a full frontal crash test at 48 kilometers per hour (km/h) (30 miles per hour (mph)). The purpose of the standard is to reduce injuries and fatalities that result from occupant contact with vehicle components, such as the hood, that are displaced into the occupant compartment through the windshield opening or into the zone immediately forward of the windshield aperture during a frontal crash.

FMVSS No. 219 specifies a protected zone at the daylight opening (DLO) portion of the vehicle windshield. The protected zone is an area encompassing the width of the windshield and that protrudes about 76 mm (3 inches) from the outer surface of the windshield. In a 48 km/h (30 mph) frontal rigid barrier crash test, no part of the vehicle from outside the occupant compartment, except windshield molding and other components designed to normally be in contact with the windshield, are permitted to penetrate the protected zone to a depth of more than 6 mm (0.25 inches) and no such part of a vehicle is permitted to penetrate the inner surface of that portion of the windshield, within the DLO, below the protected zone.

FMVSS No. 219, which took effect on September 1, 1976, applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) or less, except for forward control vehicles, walk-in van-type vehicles, or open-body-type vehicles with fold-down or removable windshields. NHTSA has maintained this standard without substantive revision since 1976.

II. NPRM To Rescind FMVSS No. 219

As part of a periodic review of existing vehicle safety regulations to determine whether a continuing safety need exists for the standard under review, NHTSA published a notice of proposed rulemaking (NPRM) that proposed to rescind FMVSS No. 219 on July 7, 2008.[1] NHTSA undertakes periodic reviews of its regulations under, *inter alia,* the Department's 1979 Regulatory Policies and Procedures, under Executive Order 12866 ''Regulatory Planning and Review,'' and under section 610 of the Regulatory Flexibility Act (5 U.S.C. 501 *et seq.*). In addition, NHTSA conducts reviews pursuant to its internal operating procedures. During this review process, FMVSS No. 219 was identified as a standard that could possibly be removed as unnecessary. The NPRM tentatively concluded that the safety need that FMVSS No. 219 addresses was being met by FMVSS No. 208, ''Occupant crash protection,'' and FMVSS No. 113, ''Hood latch system.'' The NPRM cited the improvements made to FMVSS No. 208 over the years as well as the secondary latch position required by FMVSS No. 113. Based on the performance requirements in FMVSS No. 208 and FMVSS No. 113, the agency tentatively concluded that FMVSS No. 219 was no longer necessary.

Our belief stemmed from the fact that FMVSS No. 219 had succeeded in virtually eliminating the intrusion of vehicle components from outside the occupant compartment into the windshield. The agency's analysis of FMVSS compliance and New Car Assessment Program (NCAP) tests indicated there had been no known incidents in which a crash tested vehicle failed to meet the performance requirements in FMVSS No. 219. Furthermore, in a preliminary analysis of crashes in the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS), no hood intrusions into the areas prescribed by FMVSS No. 219 were found among full frontal crashes.

III. Agency Response to Comments on the NPRM

The following organizations submitted comments on the NPRM: Public Citizen and the Center for Auto Safety (CAS) (the two commenters submitted joint comments), Advocates for Highway and Auto Safety (Advocates), the Insurance Institute for Highway Safety (IIHS), and the Alliance of Automobile Manufacturers (Alliance).[2] The issues raised include: changes in the vehicle fleet, real world data, dummy and air bag performance in

[1] 73 FR 38372.

[2] The members included: BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Mazda, Mercedes-Benz USA, Mitsubishi, Porsche, Toyota, and Volkswagen.

windshield zone intrusion, industry burden and possible effects of FMVSS No. 219 rescission on State regulation. The consumer advocacy organizations and the insurance consortium did not support the NPRM, while the vehicle manufacturer organization generally supported the rescission.

A. The Changing Vehicle Fleet

Public Citizen/CAS stated, ''In coming years, there will be an influx of new small cars from Europe and Asia, which will not necessarily be designed with consideration of FMVSS [No.] 219 if it is rescinded.'' Advocates stated that ''both long and short-term changes in the vehicle fleet make this an inappropriate action to take at this time.'' Advocates stated:

> the vehicle manufacturing industry is in a rapidly evolving, dynamic state and is developing radically new designs and types of motor vehicles. Small, uniquely designed vehicles are being produced in Europe and imported into the U.S. Three-wheel vehicles are also nearing entry into the U.S. market. In the near future, production of vehicles in China will supply many more models for import into the U.S. market, and inexpensive passenger vehicles using new designs are planned in India and other countries that may eventually be sold in the U.S. In addition, alternative fuel vehicles will incorporate unknown designs and features that, without the performance requirement and safety protection for occupants provided by FMVSS No. 219, may present safety threats that neither FMVSS No. 208 nor FMVSS No. 113 are equipped to prevent.

IIHS commented that ''NHTSA is underestimating the continuing benefits of FMVSS [No.] 219, especially considering a growing global market, while simultaneously overestimating the benefits of its rescission.''

Agency Response: The agency agrees that the vehicle fleet is in a period of change because of many factors. We agree that the U.S. fleet may begin to see new entrants from foreign and domestic manufacturers that have less experience with the FMVSS framework, in comparison to manufacturers that have long been part of the U.S. market. In addition, we also believe a period of change may be initiated by two specific influences on vehicle design, the effects of which have not yet been fully determined. Those influences are more stringent U.S. Corporate Average Fuel Economy (CAFE) standards and a global technical regulation requiring changes in vehicle design aimed at minimizing injuries to pedestrians that are struck by automobiles.

We believe manufacturers may begin using lighter materials to meet CAFE standards, including materials in and around the hoods of vehicles. Hood design could be affected by the use of lighter materials. We, therefore, agree with commenters that suggested that FMVSS No. 219 should remain in place to assure protection against hood intrusion while the vehicle fleet evolves in response to CAFE standards.

Additionally, in November 2008, the World Forum for Harmonization of Vehicle Regulations (WP.29) adopted Global Technical Regulation (GTR) No. 9 (ECE/TRANS/180/Add. 9). GTR No. 9 is aimed at establishing vehicle design criteria that will result in vehicles with hoods and related hardware that will reduce the severity of injuries to pedestrians struck by automobiles. Among the vehicle changes that manufacturers are likely to consider as a result of implementation of this GTR are softer, more deformable hood structures and alternative hood designs that aid in protecting a pedestrian that is struck by a vehicle. NHTSA is considering the benefit of adopting this GTR to harmonize U.S. regulations with the international community. Canada is currently considering adopting GTR No. 9, while Japan and the European Commission already have adopted requirements in their domestic regulations similar to those of the GTR.

Several vehicles have already shown up in the U.S. market that both comply with FMVSS No. 219 and have incorporated the kinds of changes in vehicle design anticipated by the GTR. The agency is concerned that a pedestrian safety standard might increase the possibility that some manufacturers would use hood hinges that are significantly less stiff, to produce low injury values for pedestrian testing. It makes sense that FMVSS No. 219 would be needed, at least during the initial implementation of a pedestrian standard, to ensure that rearward deformation of the vehicle's hood is not excessive in an FMVSS No. 219 type crash.

The agency agrees that there are unknowns associated with the effect of new pedestrian safety designs on the vehicle fleet as they pertain to FMVSS No. 219. Therefore, these unknowns warrant retaining FMVSS No. 219, at least until the impact of these circumstances can be more fully understood.

B. Real World Data

The IIHS and Public Citizen/CAS commented that NHTSA did not provide sufficient real world data to support the rescission of FMVSS No. 219. Public Citizen/CAS suggested that NHTSA should analyze the effectiveness of FMVSS No. 219 and the potential consequences of rescinding it before deciding whether to rescind the standard.

The IIHS stated that a review of NASS cases revealed that vehicle hood penetration into the occupant compartment still occurs in a small number of offset crashes, pole impacts, and severe underride collisions with large trucks or tractor trailers. The IIHS said that it identified NASS cases from 2002–2006 that involved crashes different from the 48 km/h (30 mph) flat barrier test required by FMVSS No. 219. The IIHS suggested that FMVSS No. 219 be modified to address the types of crashes seen in these NASS cases. Public Citizen/CAS also stated that an offset frontal crash test should be incorporated into FMVSS No. 219.

CAS compiled a list of 40 recalls from model year 1980 through 2007 that related to defective hood latch equipment. The organization said, ''[T]he presence of FMVSS No. 113 does not protect occupants in the face of these defects; therefore, the protection provided by FMVSS No. 219 ensures that occupants are not injured by an intruding roof [sic] in the event of a latch failure.'' [3]

Agency Response: NHTSA has analyzed crash data to determine the potential safety consequences of a decision to rescind FMVSS No. 219. As discussed below, the analysis has shown that the safety need for the standard for current vehicles is apparently being met by other standards. Nonetheless, for reasons related to future vehicle designs, we have decided not to rescind FMVSS No. 219.

NHTSA analyzed NASS cases of model year 2004–2008 vehicles with dual frontal air bags that were coded as having hood intrusion. A total of 78 cases were identified. Of these 78 NASS cases, only one case involved an injury to a non-ejected occupant due to hood intrusion, and the resulting injury was coded as a minor injury to the occupant's right hand and arm. Based on nationally weighting this one case, NHTSA estimates there are annually 127 minor injuries to non-ejected occupants associated with hood intrusion.

The agency also analyzed more than 900 NASS cases that met the following criteria: a 2000 model year vehicle, or newer, with a delta V of 35 km/h (22 mph),[4] or greater, with a primary frontal

[3] NHTSA assumes that Public Citizen and the Center for Auto Safety were referring to an intruding hood rather than an intruding roof. [Footnote added.]

[4] This delta V threshold was set in order to limit the number of cases to a manageable level and to

impact and available air bags. The agency found only 12 cases in which the hood intruded through the windshield. These cases involved frontal offset, pole impact, and underride crashes. None of these crash modes are required to be tested in FMVSS No. 219. The single NASS case with a minor injury to the occupant's arm and hand, described in the previous paragraph, was identified in this analysis as well. There were no other occupant injuries resulting from hood intrusion found.

Finally, the agency also reviewed 230 Crash Injury Research Engineering Network (CIREN) cases and found 9 cases that were coded with hood intrusion, 4 of which had injuries associated with hood intrusion. All of these cases involved exceedingly severe crashes under conditions that far exceed the FMVSS No. 219 testing requirements, and resulted in a significant loss of occupant space. These crashes were so severe that they exceeded the parameters of any crash test in common use, including offset or pole testing suggested by IIHS and Public Citizen/CAS.

Details of the NASS and CIREN crashes discussed above are contained in a technical report titled, ''Evaluation of NASS Cases for Windshield Zone Intrusion,'' which may be found in Docket No. NHTSA–2008–0124 (the docket for the July 7, 2008 NPRM).

C. Dummy and Air Bag Performance in Windshield Zone Intrusion

The IIHS commented that FMVSS No. 208 does not protect against windshield zone intrusion in the same way that FMVSS No. 219 does because, under FMVSS No. 208, an intrusion would have to occur and strike a test dummy in the vehicle to be considered dangerous. Any component intruding through a windshield should be considered a hazard, IIHS stated, because when intrusion occurs, even slight changes to the crash scenario could result in occupant injury.

Advocates commented that it is unclear how the dummy performance requirements of FMVSS No. 208, which it suggested are intended to protect occupants from injuries caused by contact with internal vehicle surfaces, will serve to reflect impact injuries due to windshield intrusion by external vehicle parts. It stated that the agency cannot assure the public that only blunt impact injuries would occur if FMVSS No. 219 were rescinded. Advocates also stated that FMVSS No. 208 will not necessarily prevent lacerative injuries because it is unknown how quickly air bags will deflate once punctured by a sharp object protruding through the windshield or because an air bag, once having performed its function, could start to deflate before an object intrudes through a windshield. It stated that in real world crashes, an object can strike an occupant without encountering an inflated air bag.

Agency Response: We believe that the concerns raised by Advocates and IIHS about how well FMVSS No. 208 would protect vehicle occupants against injury from objects intruding through a windshield during a crash would merit further discussion in the event further steps were taken to rescind the standard. The agency is today deciding not to proceed with rescinding FMVSS No. 219 based primarily on changes that are likely to occur in the vehicle fleet. Should the agency consider rescinding FMVSS No. 219 at a future time, we will address all appropriate issues then.

D. Industry Burden

The Alliance supported the agency's tentative assessment in the NPRM that FMVSS Nos. 208 and 113 adequately protect against windshield intrusion, that FMVSS No. 219 is redundant, and that the standard imposes an unnecessary burden on manufacturers. The Alliance commented that it ''supports the agency's periodic review of its regulations and standards * * * to assure that out of date or ineffective regulations or standards are not creating needless compliance burdens.''

Advocates, IIHS, and Public Citizen/CAS stated that FMVSS No. 219 testing imposes little burden or cost on vehicle manufacturers. IIHS stated that FMVSS No. 219 testing poses little additional compliance test burden because this aspect of safety is addressed at the same time as other flat barrier dynamic testing. Furthermore, IIHS commented that ''[M]aintaining the standard creates little additional work for the agency or manufacturers.'' Advocates stated that ''any cost savings to industry would be extremely small.'' Public Citizen/CAS commented that FMVSS No. 219 ''places a minimal burden on the industry.''

Agency Response: We note that we clearly stated in the NPRM that any cost savings resulting from the rescission of FMVSS No. 219 would be so minimal that the savings cannot be calculated. We note that the requirements of FMVSS No. 219 may be assessed during the FMVSS No. 208 crash test.[5]

In December 2004, NHTSA published a technical report analyzing the cost and weight added by different FMVSSs.[6] This report concluded that there was no attributable weight or cost associated with FMVSS No. 219. This conclusion relied on the results of a NHTSA report [7] that sampled twelve make-models pre-standard and post-standard. The report found no measurable or determinable weight or cost per vehicle associated with FMVSS No. 219.[8] Based on the negligible cost to industry to maintain and test to the performance requirements in FMVSS No. 219, the agency has concluded that FMVSS No. 219 does not place an unreasonable burden on industry.

E. Possible Effect of FMVSS No. 219 Rescission on State Regulation

The Alliance said that NHTSA ''should confirm in the notice publishing the final rule the conclusion that the safety need addressed by FMVSS No. 219 is addressed sufficiently by the current versions of FMVSS No. 208 and FMVSS No. 113, leaving no room for State regulation of this aspect of vehicle performance.'' The NPRM had stated the agency's tentative determination that if FMVSS No. 219 were rescinded, States would be free to regulate the aspect of motor vehicle performance that was regulated by the standard (73 FR at 38374).

Agency Response: Our action today to withdraw the July 7, 2008 NPRM will not change the current relationship between FMVSS No. 219 and State regulation of this aspect of vehicle performance.

IV. Agency Decision To Withdraw the Rulemaking

The agency has decided to withdraw this rulemaking. There are relatively new considerations affecting vehicle design, specifically, enhanced corporate average fuel economy standards, and global technical regulations for vehicle hoods that will reduce the severity of injuries sustained by pedestrians that are struck by vehicles. These

capture crashes around the crash severity of the standard and just below.

[5] The full frontal barrier tests in FMVSS No. 208 are now performed at 56 km/m (35 mph), which is a more severe test than that specified in FMVSS No. 219.

[6] Tarbet, M.J., *Cost and Weight Added by the Federal Motor Vehicle Safety Standards for Model Years 1968–2001 in Passenger Cars and Light Trucks.* NHTSA Technical Report No. DOT HS 809 834:128 (2004).

[7] McVetty, T.N., Cross, A.J., and Parr, L.W., *Cost Evaluation for Two Federal Motor Vehicle Safety Standards—FMVSS 113 Hood Latch—Passenger Cars—FMVSS 219 Windshield Zone Intrusion—Passenger Cars.* NHTSA Technical Report No. DOT HS 806 187:19–36 (1982).

[8] We note that in that report, the agency stated that ''it is conceivable that a more thorough teardown study including vehicles a year or two before 1976 could have revealed costs of changes made in anticipation of FMVSS No. 219, if there were any.''

considerations are likely to stimulate the use of lighter or less stiff materials in vehicles. In addition, we may begin to see new entrants from foreign and domestic manufacturers that have less experience with the FMVSS framework, in comparison to manufacturers that have long been part of the U.S. market. Therefore, the agency has concluded that now is not an appropriate time to rescind FMVSS No. 219. The agency will continue to monitor changes in the vehicle fleet that may occur as a result of these new design considerations and will continue its process of regularly reviewing the existing safety standards, which will include FMVSS No. 219.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.95 and 501.8.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–28815 Filed 11–28–12; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 77, No. 230
Thursday, November 29, 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.

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing and business meeting.

DATE AND TIME: Friday, December 7, 2012; 9:00 a.m. EST.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

Briefing Agenda: 9:00 a.m.–2:00 p.m.

This briefing is open to the public.

Topic: *Assessing the Impact of Criminal Background Checks and the Equal Employment Opportunity Commission's Conviction Records Policy on the Employment of Black and Hispanic Workers.*

I. Introductory Remarks by Chairman
II. Panel I—9:00 a.m.–10:30 a.m.: Government & Scholars Panel Speakers' Remarks and Questions from Commissioners
III. Panel II—10:30 a.m.–12:00 p.m.: Business & Advocacy Groups Panel Speakers' Remarks and Questions from Commissioners
IV. LUNCH—12:00 p.m.–12:30 p.m.
V. Panel III—12:30 p.m.–2:00 p.m.: Trade Associations Panel Speakers' Remarks and Questions from Commissioners
VI. Adjourn Briefing

Meeting Agenda—2:00 p.m.

I. Approval of Agenda
II. Program Planning
- Update on the 2013 Statutory Enforcement Report—Sexual Assault in the Military
- Update on The Civil Rights Implications of Eminent Domain Abuse briefing
- Update on the Sex Trafficking: A Gender-Based Violation of Civil Rights briefing

III. Management and Operations
- Chief of Regional Programs' report
- OGC Training

IV. State Advisory Committee Issues
- Review of Proposed Charter for SACs

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: November 26, 2012.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–28940 Filed 11–27–12; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2012]

Foreign-Trade Zone 37—Orange County, New York, Authorization of Production Activity, Takasago International Corporation (Fragrances), Harriman, New York

On July 26, 2012, Takasago International Corporation (Takasago) submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for their facility located within FTZ 37—Site 10 in Harriman, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 46377, 8–3–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 23, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–28911 Filed 11–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2012]

Foreign-Trade Zone 59—Lincoln, Nebraska, Authorization of Production Activity, Novartis Consumer Health, Inc. (Pharmaceutical and Related Preparations Production), Lincoln, Nebraska

Novartis Consumer Health, Inc. submitted a notification of proposed production activity for the company's facilities within Sites 3 and 4 of FTZ 59, in Lincoln, Nebraska.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 50462, August 21, 2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 23, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–28923 Filed 11–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Countervailing Duty Investigation and Notice of Amended Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 15, 2012,[1] the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'')

[1] *See Fine Furniture (Shanghai) Limited, et al. (Plaintiff) and Hunchun Forest Wolf Industry Company Limited, et al. (Plaintiff-Intervenors)* v. *United States (Defendant) and the Coalition for American Hardwood Parity* (*Defendant-Intervenors*), Slip-Op. 12–138 (CIT 2012).

results of redetermination [2] pursuant to the CIT's *Remand Order.*[3]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken,*[4] as clarified by *Diamond Sawblades,*[5] the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Wood Flooring Final,*[6] and is amending the final affirmative countervailing duty (''CVD'') determination and order on multilayered wood flooring (''wood flooring'') from the People's Republic of China (''PRC'') covering the period of investigation, January 1, 2009, through December 31, 2009, with respect to the inclusion of Shanghai Eswell Enterprise Co., Ltd. (''Eswell Enterprise'') and Elegant Living Corporation (''Elegant Living'') on the list of non-cooperating companies.

DATES: *Effective Date:* November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Joshua Morris, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779.

SUPPLEMENTARY INFORMATION: Subsequent to completion of its CVD investigation of wood flooring from the PRC, parties filed a suit with the CIT challenging the inclusion of Eswell Enterprise and Elegant Living in the non-cooperating companies list. On August 31, 2012, the CIT remanded to the Department the issue of inclusion of Eswell Enterprise and Elegant Living on that list.[7] The Department filed its *Remand Results* on October 31, 2012. On November 15, 2012, the CIT upheld the Department's *Remand Results* wherein the Department reconsidered the inclusion of Elegant Living and Eswell Enterprises on the list of non-cooperating companies, and determined to remove Eswell Enterprise and Elegant Living from that list.[8]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[9] The CIT's November 15, 2012, judgment sustaining the *Remand Results* constitutes a final decision of that court that is not in harmony with the *Wood Flooring Final.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Determination and Countervailing Duty Order

Because there is now a final court decision with respect to Eswell Enterprise and Elegant Living, we are amending the *Wood Flooring Final* and the *Amended CVD Order* [10] on wood flooring with respect to the margin for Eswell Enterprise and Elegant Living. Consequently, the Department will instruct U.S. Customs and Border Protection to impose cash deposits on entries of the subject merchandise exported by Eswell Enterprise or Elegant Living at the all-others rate of 1.50 percent.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: November 23, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–28916 Filed 11–28–12; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Final Results of Redetermination Pursuant to Remand in *Fine Furniture (Shanghai) Limited, et al. (Plaintiff) and Hunchun Forest Wolf Industry Company Limited, et al. (Plaintiff-Intervenors)* v. *United States (Defendant) and the Coalition for American Hardwood Parity (Defendant-Intervenors),* CIT Court No. 11–00533, (October 31, 2012) (Public Version) (''*Remand Results*'').

[3] *See Fine Furniture (Shanghai) Limited, et al. (Plaintiff) and Hunchun Forest Wolf Industry Company Limited, et al. (Plaintiff-Intervenors)* v. *United States (Defendant) and the Coalition for American Hardwood Parity* (*Defendant-Intervenors*), Slip-Op. 12–113 (CIT 2012) (''*Remand Order*'').

[4] *See Timken Co.* v. *United States,* 893 F.2d 337 (CAFC 1990) (''*Timken*'').

[5] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC 2010) (''*Diamond Sawblades*'').

[6] *See Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 64313 (October 18, 2011) (''*Wood Flooring Final*'').

[7] *See Remand Order.*

[8] *See Remand Results.*

[9] *See Timken,* 893 F.2d at 341.

[10] *See Multilayered Wood Flooring From the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012) (''*Amended CVD Order*'').

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Sunset Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2012, the Department of Commerce (''the Department'') initiated the sunset review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC''). Because the domestic interested parties did not participate in this sunset review, the Department is revoking this antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION: On June 27, 2002, the Department issued an antidumping duty order on folding metal tables and chairs from the PRC.[1] On November 6, 2007, the Department published its most recent continuation of the order.[2] On October 1, 2012, the Department initiated a sunset review of this order.[3]

We did not receive a notice of intent to participate from domestic interested parties in this sunset review by the deadline date. As a result, in accordance with 19 CFR 351.218(d)(1)(iii)(A), the Department determined that no domestic interested party intends to participate in the sunset review, and on October 21, 2012, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order.[4]

Scope of the Order: The products covered by the order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

[1] *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People's Republic of China,* 67 FR 43277 (June 27, 2002).

[2] *See Folding Metal Tables and Chairs From the People's Republic of China: Continuation of the Antidumping Duty Order,* 72 FR 62626 (November 6, 2007).

[3] *See Initiation of Five-Year (''Sunset'') Review,* 77 FR 59897 (October 1, 2012).

[4] *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

Lawn furniture;

Trays commonly referred to as ''TV trays;''

Side tables;

Child-sized tables;

Portable counter sets consisting of rectangular tables 36″ high and matching stools; and,

Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28″ to 36″ wide by 48″ to 96″ long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: Those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

Folding metal chairs with a wooden back or seat, or both;

Lawn furniture;

Stools;

Chairs with arms; and

Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.011, 9401.71.0030, 9401.71.0031, 9401.79.0045, 9401.79.0046, 9401.79.0050, 9403.20.0018, 9403.20.0015, 9403.20.0030, 9403.60.8040, 9403.70.8015, 9403.70.8020, and 9403.70.8031 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Determination To Revoke: Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because no domestic interested party filed a notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(1)(i) and section 751(c)(3)(A) of the Act, we are revoking this antidumping duty order.

Effective Date of Revocation: The effective date of revocation is November 6, 2012, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of this antidumping duty order. Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after November 6, 2012. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests of review.

This five-year (sunset) review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: November 20, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–28913 Filed 11–28–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Smart Grid Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Smart Grid Advisory Committee (SGAC or Committee), will meet in open session on Tuesday, December 18, 2012 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, December 19, 2012 from 8:30 a.m. to 12:00 p.m. Eastern time. The primary purposes of this meeting are to discuss NIST's response to recommendations from the Committee's report and to receive presentations on cybersecurity coordination and the NIST Smart Grid Program Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at *http://www.nist.gov/smartgrid.*

DATES: The SGAC will meet on Tuesday, December 18, 2012 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, December 19, 2012 from 8:30 a.m. to 12:00 p.m. Eastern time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. George W. Arnold, National Coordinator for Smart Grid Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; telephone 301–975–2232, fax 301–975–4091; or via email at *nistsgfac@nist.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Committee is composed of ten to fifteen members, appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and knowledge of issues affecting Smart Grid deployment and operations. The Committee advises the Director of NIST on carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The Committee provides input to NIST on

Smart Grid standards, priorities, and gaps, on the overall direction, status, and health of the Smart Grid implementation by the Smart Grid industry, and on Smart Grid Interoperability Panel activities, including the direction of research and standards activities. Background information on the Committee is available at *http://www.nist.gov/smartgrid/committee.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Smart Grid Advisory Committee (SGAC or Committee) will meet in open session on Tuesday, December 18, 2012 from 8:30 a.m. to 5:00 p.m. Eastern time and Wednesday, December 19, 2012 from 8:30 a.m. to 12:00 p.m. Eastern time. The meeting will be open to the public and held in Lecture Room A, in the Administration Building at NIST in Gaithersburg, Maryland. The primary purposes of this meeting are to discuss NIST's response to recommendations from the Committee's report and to receive presentations on cybersecurity coordination and the NIST Smart Grid Program Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at *http://www.nist.gov/smartgrid.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda by submitting their request to Cuong Nguyen at *cuong.nguyen@nist.gov* or (301) 975–2254 no later than 5:00 p.m. Eastern time, Tuesday, December 11, 2012. On Tuesday, December 18, 2012, approximately one-half hour will be reserved at the end of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the Office of the National Coordinator for Smart Grid Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; fax 301–975–4091; or via email at *nistsgfac@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern time, Tuesday, December 11, 2012, in order to attend. Please submit your full name, time of arrival, email address, and phone number to Cuong Nguyen. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Nguyen's email address is *cuong.nguyen@nist.gov* and his phone number is (301) 975–2254.

Dated: November 20, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–28876 Filed 11–28–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2012–0049]

Notice of Public Roundtable on Genetic Diagnostic Testing

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public roundtable.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') is interested in gathering additional information on independent second opinion genetic diagnostic testing for purposes of preparing a report on the subject as required by the America Invents Act (''AIA'' or ''Act''). To assist in gathering this information, the USPTO invites the public to attend a roundtable focused on genetic diagnostic testing.

Public Roundtable: The USPTO will hold a public roundtable in support of the genetic testing study. The roundtable will be held on Thursday, January 10, 2013, beginning at 1:00 p.m. Eastern Standard Time (EST) and ending at 4:00 p.m. (EST) in Alexandria, Virginia.

Those wishing to share commentary at the roundtable must request an opportunity to do so in writing no later than December 20, 2012. The request must include the following: (1) The name of the person wishing to share commentary; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; and (4) an indication of the amount of time requested for the commentary. Requests to share commentary must be submitted by email to Saurabh Vishnubhakat at *saurabh.vishnubhakat@uspto.gov.* Based upon the requests received, an agenda will be sent to all requesters and posted on the USPTO Internet Web site (address: *www.uspto.gov/americainventsact*).

Speakers sharing commentary at the roundtable must submit a document explaining their position for inclusion in the record of the proceedings no later than thirty days after the roundtable. Written commentary should not exceed 25 pages using at least 12-point and double-spaced font. Because written commentary will be made available for public inspection, information that a speaker does not desire to be made public, such as a telephone number, should not be included in the written comments.

The public roundtable will be available via Web cast. Information about how to access the Web cast will be posted on the USPTO's Internet Web site (address: *http://www.uspto.gov/americainventsact*) before the public roundtable.

A transcript of the roundtable will be available on the USPTO Internet Web site (address: *www.uspto.gov/americainventsact*) shortly after the roundtable.

ADDRESSES: The public roundtable will be held at the USPTO in the Madison Auditorium on the concourse level of the Madison Building, located at 600 Dulany Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Saurabh Vishnubhakat, Expert Advisor, Office of Chief Economist, by telephone at 571–272–9300, or by email at *saurabh.vishnubhakat@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 27 of the AIA charges the Director of the USPTO with delivering to Congress a study and recommendations no later than nine months after the enactment of the Act (i.e., by June 15, 2012) regarding independent second opinion genetic diagnostic testing where patents and exclusive licenses exist that cover primary genetic diagnostic tests. Congress has mandated that the study include an examination of at least the following:

(1) The impact that the current lack of independent second opinion testing has had on the ability to provide the highest level of medical care to patients and recipients of genetic diagnostic testing, and on inhibiting innovation to existing testing and diagnoses;

(2) The effect that providing independent second opinion genetic diagnostic testing would have on the existing patent and license holders of an exclusive genetic test;

(3) The impact that current exclusive licensing and patents on genetic testing

activity has on the practice of medicine, including but not limited to the interpretation of testing results and performance of testing procedures; and

(4) The role that cost and insurance coverage have on access to and provision of genetic diagnostic tests.

In the Act, Congress defined the term ''confirming genetic diagnostic test activity'' to mean the performance of a genetic diagnostic test, by a genetic diagnostic test provider, on an individual solely for the purpose of providing the individual with an independent confirmation of results obtained from another test provider's prior performance of the test on the individual.

Recognizing the diversity and complexity of the public policy issues surrounding independent second opinion genetic diagnostic testing, the USPTO conducted a thorough review of the academic and scientific literature, took notice of several published reports, and actively sought diverse and sophisticated input from the public. In that last regard, the Office published a notice in the **Federal Register** and on the USPTO public Web site dedicated to AIA implementation (AIA micro-site), seeking written comments and announcing two public hearings for this study. *See Request for Comments and Notice of Public Hearings on Genetic Diagnostic Testing,* 77 FR 3748 (Jan. 25, 2012). The Office also provided the public with a dedicated email address and a contact person in the USPTO to receive comments.

As announced in the **Federal Register** and on the AIA micro-site, the Office held two public hearings dedicated to taking public comment for this report. The first occurred at the USPTO headquarters in Alexandria, Virginia, on Thursday, February 16, 2012, and the second took place at the University of San Diego School of Law in San Diego, California, on Friday, March 9, 2012. At the hearings, witnesses provided pre-scheduled testimony, and members of the audience provided spontaneous testimony. Representatives from the USPTO attended the hearings and actively questioned all witnesses. Also, witnesses exchanged comments with the audience.

In the final days before the deadline for receipt of written comments, the Supreme Court of the United States issued two rulings with potential ramifications for the present study. The first was a memorandum opinion in *Mayo Collaborative Services* v. *Prometheus Laboratories, Inc.,* 132 S. Ct. 1289 (2012). The second was an order in *Association for Molecular Pathology* v. *Myriad Genetics,* 132 S. Ct. 1794 (2012), granting the petition for a writ of certiorari, vacating the decision of the United States Court of Appeals for the Federal Circuit (CAFC), and remanding the case for reconsideration in light of the *Mayo* decision. Accordingly, the USPTO published a notice on the AIA micro-site seeking additional public input, within ten calendar days, regarding the impact of the Supreme Court's actions on independent second opinion genetic diagnostic testing.

Through the **Federal Register** notice and hearings, the Office received twenty-seven sets of written comments and testimony from eighteen witnesses. Respondents with written comments, many of whom also testified, included four U.S. intellectual property organizations, thirteen U.S. companies and organizations, three U.S. patent practitioners, and seven members of the public speaking as individuals.

On August 28, 2012, the Department of Commerce sent a letter to the House and Senate Judiciary Committee leadership updating them on the status of the genetic testing report. The letter stated in part: ''Given the complexity and diversity of the opinions, comments, and suggestions provided by interested parties, and the important policy considerations involved, we believe that further review, discussion, and analysis are required before a final report can be submitted to Congress.'' After this additional public roundtable, the USPTO will follow next steps and fulfill its obligation to Congress.

Issues for Comment: The USPTO seeks comments on how to address the issue of independent second opinion genetic diagnostic testing and its relationship to medical care and medical practice, the rights of innovators, and considerations relevant to medical costs and insurance coverage. The issues enumerated below are as posed in the AIA and serve as a preliminary guide to aid the USPTO in collecting further relevant information and to evaluate possible administrative or legislative recommendations that may be provided to Congress. The tenor of the following issues should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular views. The public is invited to address any or all of these issues. The public also is invited to provide input on other issues believed to be relevant to the scope of the study in addition to those listed below.

(1) The impact that the current lack of independent second opinion testing has had on the ability to provide the highest level of medical care to patients and recipients of genetic diagnostic testing, and on inhibiting innovation to existing testing and diagnoses;

(2) The effect that providing independent second opinion genetic diagnostic testing would have on the existing patent and license holders of an exclusive genetic test;

(3) The impact that current exclusive licensing and patents on genetic testing activity has on the practice of medicine, including but not limited to the interpretation of testing results and performance of testing procedures; and

(4) The role that cost and insurance coverage have on access to and provision of genetic diagnostic tests.

Dated: November 21, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–28890 Filed 11–28–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0142]

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 January 28, 2013.

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, 2nd Floor, 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 TRICARE Management Activity (TMA), Portfolio Management Division, ATTN: Karen Saddoris, CDFM–A, Project Officer, 5202 Leesburg Pike, Suite 1100, Falls Church, VA 22041, or call TMA, at (703) 681–8448.

Title; Associated Form; and OMB Number: Military Health Systems DHSS/DHIMS Information Systems User Satisfaction Survey, 0720–TBD.

Needs and Uses: The information collection requirement is necessary to enable the Military Health Systems (MHS) Chief Information Officer (CIO) to employ a standardized approach to gather and report data across 20 to 25 MHS-deployed systems/applications, for both Defense Military Health Systems (DHSS) and Defense Health Information Management Systems (DHIMS) in a repeatable process for continued monitoring of user satisfaction using established quantifiable outcome-based performance measures. Parallel efforts include the need to meet the National Defense Authorization Act (NDAA) requirement imposed by Congress in bill H.R. 6523.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 350.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Average Burden per Response: 7 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are staff contracted to the Department of Defense who use any of the approximately 20–25 MHS-deployed systems/applications. These systems/applications are used by the Army, Navy, and Air Force at their respective Command Headquarters, Surgeon's General Office, Bureau of Medicine, Military Treatment Facilities, and at TMA Headquarters. The survey will determine user satisfaction with overall ease of use, access to information needed to perform their job, level of training, system response time when entering or accessing the information, and system availability/minimal downtime. In addition to the quantitative measures, the survey will gather qualitative data to help identify customer ''pain points'' concerning each system. Final analysis will provide insight to the MHS organization on how best to improve the quality of care through existing health care systems.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28860 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0144]

Proposed Collection; Comment Request

AGENCY: TRICARE Management Activity, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the TRICARE Management Activity 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 January 28, 2013.

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 the TRICARE Management Activity (TMA), Beneficiary Education & Support, ATTN: Lennya Bonivento, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or call TMA Beneficiary Education & Support, at 703–681–1770.

Title; Associated Form; and OMB Number: Assistance Reporting Tool (ART), OMB Control Number: 0720–TBD.

Needs and Uses: The ART is a secure web-based system that captures feedback on and authorization related to TRICARE benefits. Users are comprised of Military Health System (MHS) customer service personnel, to include Beneficiary Counseling and Assistance Coordinators, Debt Collection Assistance Officers, personnel, family support, recruiting command, case managers, and others who serve in a customer service support role. The ART is also the primary means by which Military Medical Support Office (MMSO) staff capture medical authorization determinations and claims assistance information for remotely located service members, line of duty care, and for care under the Transitional Care for Service-related Conditions benefit. ART data reflects the customer service mission within the MHS: it helps customer service staff users prioritize and manage their case workload; it allows users to track beneficiary inquiry workload and resolution, of which a major component is educating beneficiaries on their TRICARE benefits. Personal health information (PHI) and personally identifiable information (PII) entered into the system is received from

individuals via a verbal or written exchange and is only collected to facilitate beneficiary case resolution. Authorized users may use the PII/PHI to obtain and verify TRICARE eligibility, treatment, payment, and other healthcare operations information for a specific individual. All data collected is voluntarily given by the individual. At any time during the case resolution process, individuals may object to the collection of PHI and PII via verbal or written notice. Individuals are informed that without PII/PHI the authorized user of the system may not be able to assist in case resolution, and that answers to questions/concerns would be generalities regarding the topic at hand.

Affected Public: Individuals or households.

Annual Burden Hours: 63,500.

Number of Respondents: 254,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Daily.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The TRICARE Management Activity Beneficiary Education and Support Division designed the ART as a secure, (Department of Defense Information Assurance Certification and Accreditation Process-certified with a Privacy Impact Assessment on file with the TMA Privacy and Civil Liberties office) web-based system to track, refer, reflect, and report workload associated with resolution of beneficiary and/or provider inquiries. The ART is also the primary means by which MMSO staff capture medical authorization determinations and claims assistance information for remotely located service members, line of duty care, and for care under the Transitional Care for Service-related Conditions benefit.

Users are comprised of MHS customer service personnel, to include Beneficiary Counseling and Assistance Coordinators, Debt Collection Assistance Officers, MMSO staff, personnel, family support, recruiting command, case managers, and others who serve in a customer service support role. Only individuals with a valid need-to-know demonstrated by assigned official Government duties are granted access to the ART. These individuals must satisfy all personnel security criteria with special protection measures or restricted distribution as established by the data owner.

ART data reflects the customer service mission within the MHS: it helps customer service staff users prioritize and manage their case workload; it allows users to track beneficiary inquiry workload and resolution, of which a major component is educating beneficiaries on their TRICARE benefits.

PHI and PII entered into the system is received from individuals via a verbal or written exchange and is only collected to facilitate beneficiary case resolution. Authorized users may use the PII/PHI to obtain and verify TRICARE eligibility, treatment, payment, and other healthcare operations information for a specific individual. All data collected is voluntarily given by the individual. At any time during the case resolution process, individuals may object to the collection of PHI and PII via verbal or written notice. Individuals are informed that without PII/PHI the authorized user of the system may not be able to assist in case resolution, and that answers to questions/concerns would be generalities regarding the topic at hand.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28861 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–HA–2012–0148]

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 January 28, 2013.

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, 2nd floor, 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 Program Manager, Defense Health Information Management System (DHIMS), ATTN: COL Aaron J. Silver, 5109 Leesburg Pike, Skyline 6, Suite 703, Falls Church, VA 22041, or call DHIMS, at (703) 681–7122.

Title; Associated Form; and OMB Number: Enterprise Blood Management System (EBMS); OMB Control Number 0720–TBD.

Needs And Uses: EBMS is a family of related automated information systems (AIS) comprised of two separate and distinct commercial-off-the-shelf (COTS) software applications that provides the Military Health System (MHS) with a comprehensive enterprise wide Blood Donor Management System (BDMS) and a Blood Management Blood Bank and Transfusion Service (BMBB/TS).

- The Blood Donor Management System (BDMS) employs two separate COTS software applications, Mediware Corporation's LifeTrak Donor™ and LifeTrak Lab & Distribution™. BDMS is a technology modernization effort intended to enhance the DoD's Blood Program capabilities for Donor Centers through the seamless integration of blood products inventory management, transport, availability, and most importantly, blood and blood products traceability from collection to disposition within the electronic health record (EHR).
- The Blood Management Blood Bank Transfusion Service (BMBB/TS) employs two separate COTS software applications, Mediware Corporation's

HCLL™ (Transfusion) and KnowledgeTrak™ (Learning Management). BMBB/TS is an effort intended to enhance the DoD's Blood Program capabilities for a seamless integration of blood banking and transfusion activities, products inventory management, transport, availability, and most importantly traceability from transfusion to disposition or destruction within the electronic health record (EHR).

EBMS has built-in safeguards to limit access and visibility of personal or sensitive information in accordance with the Privacy Act of 1974. The application will account for everyone that donates blood and receives a blood transfusion in the MHS—Active Duty, Reserves, National Guard, government civilian, contractors and volunteers assigned or borrowed—this also includes non-appropriated fund employees and foreign nationals.

Affected Public: Contractors, civilian and foreign nationals donating to the Military Health Systems.

Annual Burden Hours: 766.

Number of Respondents: 4,600.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

In order to attain standardization, ensure a safe blood product, and comply with Federal law, all Military blood facilities are licensed and/or registered by the Food and Drug Administration (FDA) and must operate according to Title 21, Code of Federal Regulations, Part 211, Current Good Manufacturing Practices for Finished Pharmaceuticals, Part 610 series, Biologics, and Part 820 series, Medical Devices.

The EBMS Mediware Corporation developed COTS are FDA 510K cleared Medical Devices that provides the Military Health System (MHS) with a comprehensive enterprise wide Blood Donor Management System (BDMS) and Blood Management Blood Banking and Transfusion Service (BMBB/TS) with capabilities to manage blood donors (both in-house and at mobile collection sites), manage blood products both fresh and frozen throughout the collection, processing, testing, storing, and shipping procedures; interface with testing instrumentation for enterprise (Global) results management; shipping blood with in-transit visibility and shipping data transmit and receive; automate, enterprise-wide ''lookback'' for donors, patients, and products; automated, blood order issue, and transfusion records; manage enterprise inventory (Global), including Theater and VA. It has built-in safeguards to limit access and visibility of personal or sensitive information in accordance with the Privacy Act of 1974. The application will account for everyone that donate blood and receive blood transfusion in the MHS—Active Duty, Reserves, National Guard, government civilian, contractors and volunteers assigned or borrowed—this also includes non appropriated fund employees and foreign nationals.

EBMS is an n-tier enterprise solution. The solution will use COTS products, installed at a Central Server location. EBMS has applicability at the headquarters level allowing Armed Services Blood Program (ASBP) which is delineated in several regulations, including DoDD 6000.12, DoDI 6480.4, and AR10–64 and Service Blood Program Office (SBPO) to use this product to conduct its own day-to-day blood inventory management. This comprehensive tool provides the capability to manage inventory, monitor adverse trends, review lookback cases, manage donor deferrals and develop standard operation procedure. Deciding to implement EBMS within MHS provides an enterprise solution for transfusion and donor processing that can be applied to enterprise-wide blood inventory, and traceability throughout patient and donor life.

The information in EBMS is personal or sensitive; therefore, it contains built-in safeguards to limit access and visibility of this information. EBMS uses role-based security so a user sees only the information for which permission has been granted. It uses state-of-the-market 128-bit encryption security for our transactions. It is DoD Information Assurance Certification and Accreditation Process (DIACAP) certified having been subjected to and passed thorough security testing and evaluation by independent parties. It meets safeguards specified by the Privacy Act of 1974 in that it maintains a published Department of Defense (DoD) Privacy Impact Assessment and System of Record covering Active Duty Military, Reserve, National Guard, and government civilian employees, to include non-appropriated fund employees and foreign nationals, DoD contractors, and volunteers. EBMS is hosted in a secure facility managed by the MHS Cyber-Infrastructure Services (MCIS).

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28863 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0145]

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 January 28, 2013.

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, 2nd floor, 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 TRICARE Management Activity Program, Policy and Benefits Branch, ATTN: Mr. Mark Ellis, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206, or call 703–681–0039.

Title; Associated Form; and OMB Number: Continued Health Care Benefit Program, DD Form 2837; OMB Number 0720–TBD (previously cleared under OMB Control Number 0704–0364).

Needs and Uses: The continuing information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care coverage under the Military Health System (MHS).

Affected Public: Individuals or households.

Annual Burden Hours: 625.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Average Burden per Response: .25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals who are or were beneficiaries of the Military Health System (MHS) and who desire to enroll in the CHCBP following their loss of eligibility or entitlement to health care coverage in the MHS. These beneficiaries include any person formerly eligible for care from the MHS according to Chapter 55 or Section 1145a of Title 10, United States Code.

In order to be eligible for health care coverage under CHCBP, an individual must first enroll in CHCBP. DD Form 2837 is used as the information collection vehicle for that enrollment. The CHCBP is a legislatively mandated program and it is anticipated that the program will continue indefinitely. As such, the DoD is publishing this formal notice.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28864 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0141]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: 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 January 28, 2013.

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 the TRICARE Management Activity, Medical Benefits and Reimbursement Branch (MB&RB), ATTN: Amber L. Butterfield, 16401 E. Centretech Parkway, Aurora, CO 80011–9066, or call TRICARE, MB&RB, at (303) 676–3565.

Title; Associated Form; and OMB Number: TRICARE DoD/CHAMPUS Medical Claim—Patient's Request for Medical Reimbursement; DD Form 2642; OMB Control Number 0720–0006.

Needs and Uses: This form is used solely by beneficiaries requesting reimbursement for medical expenses under the TRICARE Program. The information collected will be used by TRICARE/CHAMPUS to determine: beneficiary eligibility; other health insurance eligibility; certification of the beneficiary eligibility and other health insurance liability; certification that the beneficiary received the care and reimbursement for the medical services received.

Affected Public: Individuals or households.

Annual Burden Hours: 750,000.

Number of Respondents: 3,000,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by beneficiaries under the TRICARE Program. TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniformed Services members and deceased sponsors, retirees and their dependents, dependents of the Department of Homeland Security (Coast Guard) sponsors, and certain North Atlantic Treaty Organizations, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. DD FORM 2642 is used solely by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to providers and suppliers for authorized health care services or supplies.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28862 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0147]

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 January 28, 2013.

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 the Office of the Assistant Secretary of Defense (Health Affairs) TRICARE Management Activity, ATTN: Ms. Shane Pham, 7700 Arlington Boulevard, Suite 5101 Falls Church, VA 22042–5101, or call at (703) 681–8666.

Title; Associated Form; and OMB Number: TRICARE Plus Enrollment Application, DD Form 2853 and TRICARE Plus Disenrollment Request, DD Form 2854; OMB Control Number 0720–0028.

Needs and Uses: These collected instruments serve as an application for enrollment and disenrollment in the Department of Defense's TRICARE Plus Health Plan established in accordance with Title 10 U.S.C. sections 1099 (which calls for a healthcare enrollment system) and 1086 (which authorizes TRICARE eligibility of Medicare Eligible Persons and has resulted in the development of a new enrollment option called TRICARE Plus) and the Assistant Secretary of Defense for Health Affairs Policy Memorandum to Establish the TRICARE Plus Program, June 22, 2001. The information collected hereby provides the TRICARE contractors with necessary data to determine beneficiary eligibility and to identify the selection of a health care option.

Affected Public: Individuals or household.

Annual Burden Hours: 2,924.

Number of Respondents: 25,065.

Responses per Respondent: 1.

Average Burden per Response: 7 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense established TRICARE Plus as an enrollment option for persons who are eligible for care in Military Treatment Facilities (MTF) and not enrolled in TRICARE Prime. TRICARE Plus provides an opportunity to enroll with a primary care provider at a specific MTF, to the extent capacity exists. This is a way to facilitate primary care appointments at an MTF when needed. TRICARE Plus enrollment will help MTFs maintain an adequate clinical case mix for Graduate Medical Education programs and support readiness-related medical skills sustainment activities. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll/disenroll in TRICARE Plus complete an enrollment application/disenrollment request. Completion of the enrollment forms is an essential element of the TRICARE program. There is no lock-in and no enrollment fee for TRICARE Plus.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28878 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0149]

Proposed Collection; Comment Request

AGENCY: TRICARE Management Activity, Office of Administration, Personnel Security Division.

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 January 28, 2013.

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, 2nd floor, 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: TRICARE Management Activity (TMA), Office of Administration, Personnel Security Division, ATTN: Chief, Personnel Security Division, 5111 Leesburg Pike, Skyline 5, Suite 810, Falls Church, VA 22041–3206 or call TMA, Office of Administration, Personnel Security Division, at 703–681–8707.

Title; Associated Form; and OMB Number: TMA Personnel Security Division Case Management System; OMB Control Number 0720–TBD.

Needs and Uses: The electronic information collection requirement is necessary to improve the current method of maintaining and recording the background investigation and security clearance status of TRICARE Management Activity contractor personnel who require access to TMA/DoD Information Technology resource and network systems, in accordance with Homeland Security Policy Directive-12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors; Executive Order 10450, Security Requirements for Government Employment; Executive Order 12968, Access to Classified Information and Background Investigations Standards; DoD 5200.2R, Personnel Security Program; Directive Type Memorandum 08–006, DoD Implementation of HSPD–12; Memorandum, May 18, 2009, DoD Implementation and Transition to the OPM eQIP; and Memorandum, September 9, 2009, TMA Implementation and Transition to the eQIP.

Affected Public: Federal personnel and/or Federal contractors.

Annual Burden Hours: 1,500.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

TRICARE Management Activity (TMA), Office of Administration, Personnel Security Division (PSD) routinely obtains and records personnel security background investigation information as a basis for determining suitability for Homeland Security Policy Directive (HSPD)–12 credentialing of TMA contractor personnel that require access to TMA/DoD Information Technology (IT) resources and network systems. TMA's HSPD–12 credential is known as the Common Access Card (CAC). The PSD makes interim determinations for issuance of the CAC for TMA contractor personnel who currently do not have the required background investigation, but do have a favorable Federal Bureau of Investigations (FBI) fingerprint report and/or favorable Advance National Agency Check (NAC), and a scheduled background investigation with the Office of Personnel Management (OPM). TMA PSD routinely maintains a record of background investigations requested from the Office of Personnel Management, Electronic Questionnaires for Investigations Processing (eQIP) system, and security clearance status of TMA contractors who require an approval before having access to TMA/DoD Information Technology (IT) resources and network systems or to sensitive data. The electronic information collection system will reduce the level of work and time involved for determining the status of returning contractors and approving CAC renewals.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28865 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–HA–0150]

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 January 28, 2013.

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, 2nd Floor, 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 Defense Health Services Systems (DHSS) Program Executive Office (PEO), ATTN: Maj Ethiel Rodriguez, Defense Health Headquarters (DHHQ) 7700 Arlington Boulevard, Falls Church, Virginia 22042–2902, or call DHSS, at 703–681–1137.

Title; Associated Form; and OMB Number: Centralized Credentials Quality Assurance System (CCQAS); OMB Control Number 0720–TBD.

Needs and Uses: CCQAS v2.9.11 is an automated Tri-Service, Web-based database containing credentialing, privileging, risk management, and adverse actions information on direct healthcare providers in the MHS. CCQAS also allows providers to apply for privileges online. This latter capability allows for a privileging workflow for new providers, for transfers (TDY and PCS), for modification of privileges, and for renewal of privileges and staff reappointment within the system. CCQAS was CAC enforced December 2009 and as part of the Federal Health Care Center, North Chicago, VA PIV users gained access in October 2010. In November 2011, CCQAS was PKI/SSO integrated.

Affected Public: Individuals or households.

Annual Burden Hours: 80,000.

Number of Respondents: 40,000.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Currently, CCQAS provides credentialing, privileging, risk-management and adverse actions capabilities which support medical quality assurance activities in the direct care system. CCQAS is fully deployed world-wide and is used by all Services (Army, Navy, Air Force) and Components (Guard, Reserve). CCQAS serves users functioning at the facility (defined by an individual UIC), Service, and DoD levels. Access to CCQAS modules and capabilities within each module is permissions-based, so that users have access tailored to the functions they perform and sensitive information receives maximal protection. Within each module, access control is available to the screen level.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28866 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense (DoD) announces a Federal Advisory Committee Meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: January 9, 2013, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Lawrence, DFO, Uniform Formulary Beneficiary Advisory Panel, 4130 Stanley Road, Suite 208, Building 1000, San Antonio, TX 78234–6012, Telephone: (210) 295–1271, Fax: (210) 295–2789. Email Address: *Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of TRICARE Management Activity, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Hepatitis C Agents
   b. Overactive Bladder Agents
   c. Gastrointestinal—2 Agents
   d. Diabetes: Non-Insulin
   e. Designated Newly Approved Drugs in Already-Reviewed Classes
   f. Pertinent Utilization Management Issues
5. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 7:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28889 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Termination of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), 41 CFR 102–3.55, and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), effective October 5, 2012, the Department of Defense gives notice that it is terminating the Chief of Naval Operations Executive Panel.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28902 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE, Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2013 Mental Health Rate Updates

AGENCY: Department of Defense.

ACTION: Notice of updated mental health rates for Fiscal Year 2013.

SUMMARY: This notice provides the updated regional per-diem rates for low-volume mental health providers; the update factor for hospital-specific per-diems; the updated cap per-diem for high-volume providers; the beneficiary per-diem cost-share amount for low-volume providers; and, the updated per-diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for Fiscal Year 2013.

DATES: Effective Date: The Fiscal Year 2013 rates contained in this notice are effective for services on or after October 1, 2012.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Elan Green, Medical Benefits and Reimbursement Branch, TMA, telephone (303) 676–3907.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** (FR) on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per-diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal Fiscal Year. As stated in the final rules, each per-diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System (i.e., this is the same update factor used for the inpatient prospective payment system). For Fiscal Year 2013, the market basket rate is 2.6 percent. This year, Medicare applied two reductions to its market basket amount: (1) A 0.7 percent reduction for economy-wide productivity required by section 3401(a) of the Patient Protection and Affordable Care Act (PPACA) which amended section 1886(b)(3)(B) of the Social Security Act, and (2) a 0.1 percent point adjustment as required by section 1886(b)(3)(B)(xii) of the Act as added and amended by sections 3401 and 10319(a) of the PPACA. These two reductions do not apply to TRICARE. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional-specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for Fiscal Year 2013 updated by 2.6 percent

Partial hospitalization rates for full-day programs also will be updated by 2.6 percent for Fiscal Year 2013. Partial hospitalization rates for programs of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for a full-day program.

The cap amount for high-volume hospitals and units also will be updated by the 2.6 percent for Fiscal Year 2013.

The beneficiary cost share for low-volume hospitals and units also will be updated by the 2.6 percent for Fiscal Year 2013.

Per 32 CFR 199.14, the same area wage indexes used for the CHAMPUS Diagnosis-Related Group (DRG)-based payment system shall be applied to the wage portion of the applicable regional per-diem for each day of the admission. The wage portion shall be the same as that used for the CHAMPUS DRG-based payment system. For wage index values greater than 1.0, the wage portion of the regional rate subject to the area wage adjustment is 68.8 percent for Fiscal Year 2013. For wage index values less than or equal to 1.0, the wage portion of the regional rate subject to the area wage adjustment is 62 percent.

Additionally, 32 CFR 199.14, requires that hospital specific and regional per-diems shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

The following reflect an update of 2.6 percent for Fiscal Year 2013.

REGIONAL-SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME FOR FISCAL YEAR 2013

United States Census region	Regional rate
Northeast:	
New England	$807
Mid-Atlantic	778
Midwest:	
East North Central	672
West North Central	634
South:	
South Atlantic	800
East South Central	856
West South Central	729
West:	
Mountain	728
Pacific	860
Puerto Rico	549

Beneficiary cost-share: Beneficiary cost-share (other than dependents of Active Duty members) for care paid on the basis of a regional per-diem rate is the lower of $213 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2012. Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $1,015 per day for services on or after October 1, 2012.

The following reflects an update of 2.6 percent for Fiscal Year 2013 for the full day partial hospitalization rates. Partial hospitalization rates for programs of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for a full-day program.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS

[Fiscal year 2013]

United States Census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (Maine, N.H., Vt., Mass., R.I., Conn.)	$323	$242

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS—Continued

[Fiscal year 2013]

United States Census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Mid-Atlantic:		
(N.Y., N.J., Penn.)	352	264
Midwest:		
East North Central (Ohio, Ind., Ill., Mich., Wis.)	310	233
West North Central:		
(Minn., Iowa, Mo., N.D., S.D., Neb., Kan.)	310	233
South:		
South Atlantic (Del., Md., DC, Va., W.Va., N.C., S.C., Ga., Fla.)	331	248
East South Central:		
(Ky., Tenn., Ala., Miss.)	359	269
West South Central:		
(Ark., La., Texas, Okla.)	359	269
West:		
Mountain (Mon., Idaho, Wyo., Col., N.M., Ariz., Utah, Nev.)	362	272
Pacific (Wash., Ore., Calif., Alaska, Hawaii)	356	267
Puerto Rico	231	173

The above rates are effective for services rendered on or after October 1, 2012.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28881 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2013 Diagnosis Related Group (DRG) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS). It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the data necessary to update the FY 2013 rates.

DATES: *Effective Date:* The rates, weights, and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2012.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Amber L. Butterfield, Medical Benefits and Reimbursement Branch, TMA, telephone (303) 676–3565.

Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publish these changes annually in the **Federal Register** and discuss in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the TRICARE DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the two age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to Major Diagnostic Category (MDC) 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants being grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513

were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic. For admissions occurring on or after October 1, 2004, DRG 483 was deleted and replaced with DRGs 541 and 542, splitting the assignment of cases on the basis of the performance of a major operating room procedure. The description for DRG 480 was changed to ''Liver Transplant and/or Intestinal Transplant,'' and the description for DRG 103 was changed to ''Heart/Heart Lung Transplant or Implant of Heart Assist System.'' For FY 2007, CMS implemented classification changes, including surgical hierarchy changes. The TRICARE Grouper incorporated all changes made to the Medicare Grouper, with the exception of the pre-surgical hierarchy changes, which remained the same as FY 2006. For FY 2008, Medicare implemented their Medicare-Severity DRG (MS–DRG) based payment system. TRICARE, however, continued with the CMS–DRG-based payment system for FY 2008. For FY 2009, the TRICARE/CHAMPUS DRG-based payment system was modeled on the MS–DRG system, with the following modifications:

The MS–DRG system consolidated the 43 pediatric CMS DRGs that were defined based on age less than or equal to 17 into the most clinically similar MS–DRGs. In its Inpatient Prospective Payment System final rule for MS–DRGs, Medicare stated for its population these pediatric CMS–DRGs contained a very low volume of Medicare patients. At the same time, Medicare encouraged private insurers and other non-Medicare payers to make refinements to MS–DRGs to better suit the needs of the patients they serve. Consequently, TRICARE found it appropriate to retain the pediatric CMS–DRGs for our population. TRICARE also retained the TRICARE-specific DRGs for neonates and substance use.

For FY09, TRICARE used the MS–DRG v26.0 pre-MDC hierarchy, with the exception that MDC 15 applied after DRG 011–012 and before MDC 24.

For FY10, there were no additional or deleted DRGs.

For FY 11, the added DRGs and deleted DRGs were the same as those included in CMS's final rule published on August 16, 2010. That is, DRG 009 were deleted; DRGs 014 and 015 were added.

For FY 12, the added DRGs and deleted DRGs were the same as those included in CMS's final rule published on August 18, 2011 (76 FR 51476–51846). That is, DRG 015 was deleted; DRGs 016 and 017 were added.

For FY 2013 there are no new, revised, or deleted DRGs.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. TRICARE will also duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board. In addition, TRICARE will continue to utilize the out commuting wage index adjustment.

C. Revision of the Labor-Related Share of the Wage Index

TRICARE is adopting CMS's percentage of labor related share of the standardized amount. For wage index values greater than 1.0, the labor related portion of the Adjusted Standardized Amount (ASA) shall equal 68.8 percent. For wage index values less than or equal to 1.0 the labor related portion of the ASA shall continue to equal 62 percent.

D. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS for all hospitals subject to the TRICARE DRG-based payment system according to CMS's August 31, 2012, final rule. For FY 2013, the market basket is 2.6%. Medicare applied reductions to the market basket in FY 2013; however, these reductions do not apply to TRICARE.

E. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments (TRICARE reimburses hospitals for their capital costs as reported annually to the contractor on a pass-through basis), we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2013, the TRICARE fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for Indirect Medical Education (IDME) plus a fixed dollar amount. Thus, for FY 2013, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $24,230 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

F. National Operating Standard Cost as a Share of Total Costs

The FY 2013 TRICARE National Operating Standard Cost as a Share of Total Costs (NOSCASTC) used in calculating the cost outlier threshold is 0.92. TRICARE uses the same methodology as CMS for calculating the NOSCASTC, however, the variables are different because TRICARE uses national cost to charge ratios while CMS uses hospital specific cost to charge ratios.

G. Indirect Medical Education (IDME) Adjustment

Passage of the Medicare Modernization Act (MMA) of 2003 modified the formula multipliers to be used in the calculation of the IDME adjustment factor. Since the IDME formula used by TRICARE does not include disproportionate share hospitals, the variables in the formula are different than Medicare's; however, the percentage reductions that will be applied to Medicare's formula will also be applied to the TRICARE IDME formula. The multiplier for the IDME adjustment factor for TRICARE for FY 2013 is 1.02.

H. Expansion of the Post Acute Care Transfer Policy

For FY 2013 TRICARE is adopting CMS's expanded post acute care transfer policy according to CMS's final rule published August 31, 2012.

I. Cost to Charge Ratio

TRICARE uses a national Medicare cost-to-charge ratio (CCR). For FY 2013, the Medicare CCR ratio used for the TRICARE DRG-based payment system for acute care hospitals and neonates will be 0.2979. This is based on a weighted average of the hospital-specific Medicare CCRs (weighted by the number of Medicare discharges) after excluding hospitals not subject to the TRICARE DRG system (Sole Community Hospitals, Indian Health Service Hospitals, and hospitals in Maryland). The Medicare CCR is used to calculate cost outlier payments, except for children's hospitals. The Medicare CCR has been increased by a factor of 1.0065 to include an additional allowance for bad debt. The 1.0065 factor reflects the provisions of the Middle Class Tax Relief and Job Creation Act of 2012. For children's hospital cost outliers, the cost-to-charge ratio used is 0.3231.

J. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *www.tricare.osd.mil* under the

sequential headings TRICARE Provider Information, Rates and Reimbursements, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-based payment system during FY 2013. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR Part 199.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28880 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0023]

Proposed Collection; Comment Request

AGENCY: United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a reinstatement 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 January 28, 2013.

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: HQ USAFA/RRS, ATTN: Patty Edmond, 2304 Cadet Drive, Suite 2400, USAF Academy, CO 80840 or call 719–333–3358.

Title; Associated Form; and OMB Number:

Nomination for Appointment to the United States Military Academy, Naval Academy or Air Force Academy, DD FORM 1870 (previous OMB Control No. 0701–0026); United States Air Force Academy Candidate Writing Sample, USAFA Form 0–878 (previous OMB Control No. 0701–0147); United States Air Force Academy School Official's Evaluation of Candidate, USAFA Form 145 (previous OMB Control No. 0701–0152); United States Air Force Academy Candidate Personal Data Record, USAFA Form 146 (previous OMB Control No. 0701–0064), United States Air Force Academy Candidate Activities Record, USAFA Form 147 (previous OMB Control No. 0701–0063); United States Air Force Academy Request for Secondary School Transcript, USAFA Form 148 (previous OMB Control No. 0701–0066); and Air Force Academy PreCandidate Questionnaire, USAFA Form 149 (previous OMB Control No. 0701–0087); New OMB Control Number: 0701–TBD.

Needs and Uses:

DD FM 1870 is used to implement the provisions of Title X, U.S.C. 4342, 6953 and 32 CFR part 901. Members of Congress, the Vice President and Delegates to Congress and Resident Commissioner of Puerto Rico use this form to nominate constituents to the three DOD Academies, West Point, Annapolis and Air Force. Data required is supplied by the prospective nominees to Members of Congress. Eligibility requirements are outlined in AFI 36–2019, Appointment to the United States Air Force Academy.

USAFA Form 0–0878 is necessary in order to evaluate background and aptitude for commissioned service. This data allows the selection panel to evaluate the ''whole person'' concept.

USAFA Form 145 is necessary in order to provide a candidate opportunity to show through their English, Math, or other instructors that they can meet Air Force academic performance.

USAFA Form 146 is necessary in order to provide a candidate's family and personal background. This data also includes eligibility by verification of age, U.S. citizenship, law infractions, schooling beyond high school, previous active duty tours, and previous applications to service academies.

USAFA Form 147 is necessary in order to provide a candidate's participation in athletic and non-athletic extracurricular activities. Without this information it would be difficult to accurately determine a candidate's leadership abilities and physical stamina.

USAFA Form 148 is necessary in order to provide academic and school background data by a candidate's high school official. Without this information it would be difficult to accurately determine a candidate's academic abilities.

USAFA Form 149 is necessary in order to provide a candidate's initial screening information. Without this information it would be difficult to accurately determine if an initial applicant would be qualified to enter into the candidate phase of the process. Final USAF Academy selections could not be made if reviewing committees are not able to determine whether basic requirements have or have not been met.

Affected Public: Applicants to DoD Military Academies, Candidates for the Air Force Academy, High school instructors and counselors.

Annual Burden Hours: 117,570.

Number of Respondents: 58,785.

Responses Per Respondent: 1.

Average Burden Per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Form 1870, Nomination for Appointment to the United States Military Academy, Naval Academy and Air Force Academy, is used solely by legal nominating authorities who by Federal law are entitled to make appointments to the three service military academies. The nomination form allows for nominating authorities to select by checking one box as to which academy is being provided with the name of a nomination to be processed. Eligibility information concerning the nominees is information that is also included on the form. The nominating authority identifies himself/herself and must date and sign the form to make it a legally

acceptable form. The form includes the three addresses of the service academies in order that the form may be submitted to the proper academy.

Respondents are candidates applying to the Air Force Academy, instructors of candidates, and their high school counselors. Information collection is necessary in order to determine which candidates have been nominated by their Congress person or Senator; to evaluate background and aptitude for commissioned service; to provide a candidate's participation in athletic and non-athletic extracurricular activities, family and personal background, and academic and school background data by a candidate's high school official. This data also includes eligibility by verification of age, U.S. citizenship, law infractions, schooling beyond high school, previous active duty tours, and previous applications to service academies. It is also necessary in order to provide a candidate opportunity to show through English, Math, or other instructors that they can meet Air Force academic performance. This data allows the selection panel to evaluate the ''whole person'' concept. Without this information it would be difficult to accurately determine if an initial applicant would be qualified to enter into the candidate phase of the process. It would also be difficult to accurately determine a candidate's leadership abilities, physical stamina, and academic abilities. Final USAF Academy selections could not be made if reviewing committees are not able to determine if basic requirements have or have not been met.

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28859 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0026]

Proposed Collection; Comment Request

AGENCY: Department of Defense/ Department of the Air Force/ Headquarters, Air Force Reserve Officer Training Corps (AFROTC).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a reinstatement 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 January 28, 2013.

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: The AFROTC Scholarship Program, ATTN: Mr. Jack Sanders, 551 E. Maxwell Blvd., Maxwell AFB AL 36112 or 334–953–2869.

Title; Associated Form; and OMB Number: AFROTC Scholarship Program On-line Application, OMB Number 0701–0101.

Needs and Uses: The AFROTC scholarship application is required for completion by high school seniors and recent graduates for the purpose of competing for an AFROTC 4 year scholarship. Respondents must complete and submit their application via the AFROTC.com web site. Submitted data will be evaluated by AFROTC scholarship selections boards to determine eligibility and to select individuals for the award of a college scholarship.

Affected Public: High school seniors and recent graduates who apply for an AFROTC scholarship.

Annual Burden Hours: 7,500

Number of Respondents: 15,000

Responses per Respondent: 1

Average Burden per Response: 30 minutes

Frequency: Annually

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The following is required to be provided by the applicant and maintained by AFROTC. Names, addresses, social security numbers, telephone numbers, transcripts, and resumes.

The following documentation is provided as part of the application:

1. Counselor Certification/Signed copy of Transcript (9th–11th grades only)
2. Extracurricular Activity Sheet
3. GPA and SAT and/or ACT scores
4. Physical Fitness Assessment
5. Résumé

Dated: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–28877 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2012–0027]

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 to 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 December 31, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 31, 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 of 1974, as amended were submitted on November 20, 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: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC L

SYSTEM NAME:

Unfavorable Information Files (UIF) (June 29, 1999, 64 FR 34789).

CHANGES:

SYSTEM ID:

Delete entry and replace with ''F036 AFPC L''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Complete UIFs are maintained in the Military Personnel Section (MPS), Headquarters Air Reserve Personnel Center (HQ ARPC), 18420 E. Silver Creek, Bldg #390 MS 68, Buckley AFB, CO 80011–9502 or HQ Air National Guard Readiness Center (HQ ANGRC), 3500 Fetchet Avenue, Andrews AFB MD 20762–5157 or Base Military Person Sections; Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active Duty, Reserve and Air National Guard personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN) and/or DoD Identification Number (DoD ID Number), date of birth, rank and grade, written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence and drug/alcohol abuse correspondence.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Department of the Air Force; 10 U.S.C. Sections 885, 886, and 887 (UCMJ Articles 85, 86, and 87) allows authorities to collect and maintain this information by Air Force Instruction 36–2907, Unfavorable Information File (UIF) Program and E.O. 9397 (SSN), as amended.''

* * * * *

STORAGE:

Delete entry and replace with ''Maintained in secured file binders/cabinets and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by person(s) responsible for servicing the records system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in file cabinets in a locked building with controlled access entry requirements. Electronic files are only accessed by authorized personnel with a secure Common Access Card (CAC) and an official need to need-to-know.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing Military Personnel Section, Headquarters Air Reserve Personnel Center or Headquarters Air National Guard Readiness Center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an 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)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the servicing Military Personnel Section, Headquarters Air Reserve Personnel Center or Headquarters Air National Guard Readiness Center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature. In addition, the requester must provide a notarized statement or an 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)'.''

* * * * *

[FR Doc. 2012–28899 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2012–0042–0001]

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 December 31, 2012.

Title, Associated Forms and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions; OMB Control Number 0704–0321.

Type of Request: Extension.

Number of Respondents: 381.

Responses per Respondent: Approximately 12.

Annual Responses: 4,572.

Average Burden per Response: Approximately 1.5 hours.

Annual Burden Hours: 6,858 (includes 2,286 response hours plus 4,572 recordkeeping hours).

Needs and Uses: The Arms Export Control Act requires, in the absence of a special Presidential Finding, that the U.S. Government purchase military equipment for foreign governments using foreign funds and without any charge to U.S. appropriated funds. In order to comply with this requirement, the Government needs to know how much to charge each country as progress payments are made for foreign military sales (FMS) purchases. The Government can only obtain this information from the contractor preparing the progress payment request. The clause at 252.232–7002, requires a contractor whose contract includes FMS requirements to submit a progress payment request with a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. contract requirements.

The information generated by the progress payment submission requirements of DFARS part 232 is used by contracting officers to maintain an audit trail and permit verification of calculations. The Government also uses this information to determine how much to disburse to the contractor. Absent this information, the Government would be unable to pay the FMS portion of the progress payment request, thereby breaching its contractual duties, with subsequent damages payable to the contractor; the Disbursing Officer would commit a statutory violation in wrongfully disbursing U.S. funds contrary to the Congressional instructions for payments for FMS work; or the U.S. Government would violate its fiduciary duty to the foreign country whose funds are improperly disbursed for some other country's purchases.

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.

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 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. 2012–28879 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2012–0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its 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 December 31, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 31, 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. 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 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 system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 20, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on 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: November 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07220–1

SYSTEM NAME:

Navy Standard Integrated Personnel System (NSIPS) (December 16, 2010, 75 FR 78688).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''All Navy military members and their dependents.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), date of birth, citizenship, race/ethnicity, personal cell phone numbers, mailing/home addresses, mother's maiden name, marital status, direct deposit, allotment and other pay related transactions, emergency contact, legal status, home telephone number, religious preference, mothers middle name, employment information, education information, DoD ID Number, gender, place of birth, personal email address, security clearance, spouse information, child information, military records, military orders and expense data, military training and qualifications, professional assignment history, military performance evaluations, military promotions, leave and pay entitlements and deductions.''

PURPOSE(S):

Delete entry and replace with ''The purpose of this system is to provide secure worldwide personnel and pay support for Navy members and their commands. To allow authorized Navy personnel and pay specialists to collect, process, modify, transmit, and store unclassified personnel and pay data. Additionally, the system supports management of leave and pay entitlements and deductions so that this information can be provided to the Defense Finance and Accounting Service (DFAS) for payroll processing. The system also supports collection of spouse and child information to be used for updates to the military member's dependency status.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by name, Social Security Number (SSN), and/or DoD ID Number.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Official records and systems maintaining personnel information, professional qualifications, and educational institutions. These records and systems include the Navy Military Personnel Records System, Enlisted Master File Automated System, Officer Master File Automated System, Reserve Command Management System, On-Line Distribution Information System, Enlisted Advancement System, Military Order Obligation and Expenditure Management System and Education and Training Records, and from the individual.''

* * * * *

[FR Doc. 2012–28898 Filed 11–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–20–000]

Commission Information Collection Activities (FERC–912); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–912, Cogeneration and Small Power Production, PURPA Section 210(m) Regulations for Termination or Reinstatement of Obligation to Purchase or Sell, 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 58365, 09/20/2012) requesting public comments. FERC received no comments on the FERC–912 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by December 31, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0237, 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. IC12–20–000, 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–912, Cogeneration and Small Power Production, PURPA Section 210(m) Regulations for Termination or Reinstatement of Obligation to Purchase or Sell.

OMB Control No.: 1902–0237.

Type of Request: Three-year extension of the FERC–912 information collection requirements with no changes to the current reporting requirements.

Abstract: On 8/8/2005, the Energy Policy Act of 2005 (EPAct 2005)[1] was signed into law. Section 1253(a) of EPAct 2005 amends Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding subsection ''(m)'' that provides for the termination and reinstatement of an electric utility's obligation to purchase and sell energy

[1] Public Law 109–58, 119 Stat. 594 (2005)

and capacity. 18 CFR 292.309–292.313 are the implementing regulations that provide procedures for:

- An electric utility to file an application for the termination of its obligation to purchase energy from a Qualifying Facility (QF) [2];
- An affected entity or person to apply to the Commission for an order reinstating the electric utility's obligation to purchase energy from a QF [3];
- An electric utility to file an application for the termination of its obligation to sell energy and capacity to QFs [4]; and
- An affected entity or person to apply to the Commission for an order reinstating the electric utility's obligation to sell energy and capacity to QFs [5].

Type of Respondents: FERC-jurisdictional electric utilities.

Estimate of Annual Burden [6]: The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–912 (IC12–20–000): COGENERATION AND SMALL POWER PRODUCTION, PURPA SECTION 210(m) REGULATIONS FOR TERMINATION OR REINSTATEMENT OF OBLIGATION TO PURCHASE OR SELL

	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)
Termination of obligation to purchase [2]	5	1	5	12	60
Reinstatement of obligation to purchase [3]	1	1	1	13	13
Termination of obligation to sell [4]	1	1	1	12	12
Reinstatement of obligation to sell [5]	1	1	1	13	13
Total					98

The total estimated annual cost burden to respondents is $6762.94 [98 hours ÷ 2080 [7] hours per year = 0.047 * $143,540/years [8] = $6762.94]

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: November 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28870 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–099]

Greenwood County; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 1267–099.

c. *Date Filed:* October 1, 2012.

d. *Applicant:* Greenwood County.

e. *Name of Project:* Buzzards Roost Hydroelectric Project.

f. *Location:* Lake Greenwood in Greenwood County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Julie Davis, Greenwood County, Department of Lake Management, 528 Monument Street, Room B–03, Greenwood, SC, 29646–2691, (864) 943–2648.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 24, 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–1267–099) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

[2] Contained within 18 CFR 292.310

[3] Contained within 18 CFR 292.311

[4] Contained within 18 CFR 292.312

[5] Contained within 18 CFR 292.313

[6] 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 Code of Federal Regulations 1320.3.

[7] 2080 hours/year = 40 hours/week * 52 weeks/year.

[8] Average annual salary plus benefits per employee in 2012.

k. *Description of Application:* Greenwood County requests Commission approval to authorize Great South Partners to construct a day-use, commercial marina within the project boundary on Lake Greenwood that would serve patrons of a prospective restaurant to be located outside the project boundary on the adjoining parcel. The proposed marina would occupy an on-the-water footprint measuring 240 feet long by 136 feet wide, consisting of two floating docks connected by a common walkway, accommodating 64 watercraft in total. An existing seawall is located along 330 feet of the 425 feet of shoreline frontage along this parcel. No dredging or vegetation removal is associated with this proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1267) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, 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: November 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28869 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 308–005—Oregon]

PacifiCorp Energy; Notice of Corrected Process Plan and Schedule

On August 4, 2011, the Federal Energy Regulatory Commission (Commission) issued the Scoping Document 2 for relicensing of PacifiCorp Energy's 1.1-megawatt Wallowa Falls Hydroelectric Project (FERC No. 308). Appendix B of the Scoping Document 2 provides a process plan and schedule for the Integrated Licensing Process. The process plan and schedule incorrectly identifies January 13, 2013, as the due date for filing the initial study report, and January 13, 2014, as the due date for filing the updated study report.

The correct due date is January 3, 2013, for the initial study report, and January 3, 2014, for the updated study report. There are no other modifications to the previously issued schedule.

Dated: November 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28868 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–46–000]

Ameren Corporation; Notice of Filing

Take notice that on November 15, 2012, Ameren Corporation (Ameren) submitted a refund report and request for Commission guidance in compliance with the Commission's Order Approving Accounting for Internal Corporate Reorganization and Denying Rate Treatment Related to Acquisition Premiums, issued on July 19, 2012.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: December 21, 2012.

Dated: November 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28874 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Ameren Corporation,* 140 FERC ¶ 61, 034 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ13–3–000]

City of Vernon, California; Notice of Filing

Take notice that on November 16, 2012, City of Vernon, California submitted its tariff filing per 35.28(e): Filing 2013 TRR and TRBAA to be effective 1/1/2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 7, 2012.

Dated: November 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28872 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7024–000]

Falck, David P.; Notice of Filing

Take notice that on November 23, 2012, David P. Falck submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2008) and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 (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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 14, 2012.

Dated: November 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28871 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–442–000]

AES Beaver Valley, 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 AES Beaver Valley, 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 December 13, 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: November 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28873 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–11–000]

Cobra Pipeline Ltd.; Notice of Petition for Rate Approval

Take notice that on November 19, 2012, Cobra Pipeline Ltd. (Cobra) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations and to revise its Statement of Operating Conditions. Cobra proposes to utilize rates that are the same as those contained in Cobra's storage and transportation rate schedules for comparable intrastate service on file with the Public Utilities Commission of Ohio, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Wednesday, December 5, 2012.

Dated: November 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28867 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13465–001]

Henry County, Iowa; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 3, 2012, Henry County, Iowa, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Oakland Mills Dam Hydroelectric Project (Oakland Project or project) to be located on the Skunk River, near Tippecanoe Township, section 24, Henry County, Iowa. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. 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 the following: (1) A reservoir with a surface area of 28 acres and a storage capacity of 62-acre-feet at normal pool elevation of 583.56 mean sea level; (2) a 460-foot-long dam composed of a 258.58-foot-long concrete spillway section, a 7.5-foot-wide fish ladder, a 78.75-foot-long gated section containing three 24-foot-wide bays, and a 115.17-foot-long reserve turbine bay and powerhouse combination; (3) five turbine-generators with an installed capacity of 200 kilowatt (kW) each, submerged on the upstream side of the reserve turbine bay and receiving water via a concrete conduit structure equipped with trash racks; (4) a 50-foot-long transmission line connecting the project to a transmission line owned by the local utility; and (5) appurtenant facilities. The project would have a total installed capacity of 1,000 kW and generate about 7,008,000 kilowatt-hours. There are no lands of the United States enclosed within the project boundary.

Applicant Contact: Mr. John Pullis, Director, Henry County, Iowa, Henry County Conservation Department, 2593 Nature Center Drive, Mt. Pleasant, Iowa 52641; phone: (319) 986–5067.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, 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–13465–001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28875 Filed 11–28–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OW–2011–0466; FRL 9756–2]

2012 Recreational Water Quality Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the 2012 *Recreational Water Quality Criteria.*

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of the 2012 *Recreational Water Quality Criteria* (RWQC). The document contains the EPA's recreational water quality criteria recommendations for protecting human health in ambient waters that are designated for primary contact recreation. CWA Section 304(a) water quality criteria recommendations are intended as guidance to States and authorized Tribes in developing water quality standards. The 2012 RWQC document describes the relevant scientific findings, explains how these findings were used to derive criteria for two indicators of fecal contamination (enterrococcus and E. coli) as measured by culture based test methods. On December 21, 2011, EPA made available draft national recommended recreational water quality criteria (2011 Draft RWQC) and provided the public an opportunity to provide scientific views.

The 2012 RWQC differs from the current 1986 Ambient Water Quality Criteria in the following ways: the EPA recommends States use one of two sets of criteria values, and no longer recommends multiple ''use intensity'' values; the RWQC consist of both a geometric mean (GM) and a Statistical Threshold Value (STV); the RWQC are now comprised of a magnitude, a duration, and frequency of excursion for the GM and STV; the EPA introduces a rapid analytical technique for beach monitoring, quantitative polymerase chain reaction (qPCR), for the detection of enterococci in recreational water (EPA Method 1611; the EPA provides information on tools for evaluating and managing recreational waters, such as predictive modeling; the EPA is providing a beach action value for use in beach notification programs; and the EPA is providing tools for developing site-specific criteria.

The CWA, as amended by the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000, directed the EPA to conduct studies associated with pathogens and human health under section 104(v), and to publish new or revised criteria for pathogens and pathogen indicators based on those studies under section 304(a)(9). The criteria announced today are the new or revised criteria that EPA is directed to publish under section 304(a)(9) of the CWA, as amended by the BEACH Act.

ADDRESSES: The draft 2011 and final 2012 RWQC documents, as well as the scientific views received from the public on the draft 2011 RWQC, are available from the EPA Docket Center and are identified by Docket ID No. EPA–HQ–OW–2011–0466. They may be accessed online at:

- *www.regulations.gov:* Follow the on-line instructions.
- *Email: OW-Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 28221T; 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *On Site:* EPA Docket Center, 1301 Constitution Ave. NW., EPA West, Room 3334, Washington, DC. This Docket Facility is open from 8:30 a.m. until 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 Office of Water is (202) 566–2426.

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: For questions concerning the science supporting these criteria, contact Sharon Nappier, Health and Ecological Criteria Division (4304T), *nappier.sharon@epa.gov,* U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 566–0740. For questions concerning the use of EPA's criteria recommendations, contact Tracy Bone, Standards and Health Protection Division (4305T), *bone.tracy@epa.gov,* U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; (202) 564–5257.

SUPPLEMENTARY INFORMATION:

I. What are section 304(a) water quality criteria?

Section 304(a) water quality criteria are recommendations developed by EPA under authority of section 304(a) of the Clean Water Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. Section 304(a)(1) of the Clean Water Act directs the EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to the EPA when promulgating Federal regulations under section 303(c) when such action is necessary. Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (e.g., aquatic life, recreational use). States and authorized Tribes may adopt other scientifically defensible water quality criteria that differ from these recommendations. When adopting new or revised water quality standards, the States and authorized Tribes must adopt criteria that are scientifically defensible and protective of the designated uses of the bodies of water. In establishing criteria, States may base it on (1) EPA's recommended criteria, (2) EPA's recommended criteria modified to reflect site-specific conditions, or (3) other scientifically defensible methods. The EPA's water quality criteria recommendations are not regulations. Thus, the EPA's recommended criteria do not constitute legally binding requirements.

II. What are the Recreational Water Quality Criteria recommendations?

The EPA is today publishing the *Recreational Water Quality Criteria* recommendations for protecting human health. The EPA evaluated the available data and provided an opportunity for the public to provide scientific views on the 2011 Draft RWQC. EPA received more than 9,000 comments. EPA reviewed the comments and made some changes in response to those comments. The comments can be found in the docket associated with this action. Based on the available data and input from comments, EPA determined that the designated use of primary contact recreation would be protected if the following criteria were adopted into water quality standards:

RECOMMENDED 2012 RWQC

Criteria elements	Estimated illness rate: 36 per 1,000 primary contact recreators		Estimated illness rate: 32 per 1,000 primary contact recreators	
	Magnitude		Magnitude	
Indicator	GM (cfu/100 mL) [a]	STV (cfu/100 mL) [a]	GM (cfu/100 mL) [a]	STV (cfu/100 mL) [a]
Enterococci—marine and fresh; or	35	130	30	110
E. coli—fresh	126	410	100	320

Duration and Frequency: The waterbody GM should not be greater than the selected GM magnitude in any 30-day interval. There should not be greater than a ten percent excursion frequency of the selected STV magnitude in the same 30-day interval.

[a] EPA recommends using EPA Method 1600 (U.S. EPA, 2002a) to measure culturable enterococci, or another equivalent method that measures culturable enterococci and using EPA Method 1603 (U.S. EPA, 2002b) to measure culturable *E. coli,* or any other equivalent method that measures culturable *E. coli.*

Dated: November 19, 2012.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2012–28909 Filed 11–28–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement 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 agreement 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.: 012190.

Title: HSDG–GWF Space Charter Agreement.

Parties: Hamburg Sud and Great White Fleet Liner Services Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006–4007.

Synopsis: The agreement authorizes Hamburg Sud to charter space to Great White Fleet in the trade between ports in California and ports in Guatemala, Panama, Ecuador, and Peru.

Dated: November 26, 2012.

By Order of the Federal Maritime Commission.

Rachel Dickon,

Assistant Secretary.

[FR Doc. 2012–28921 Filed 11–28–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer: Cynthia Ayouch, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer: Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW.,Washington, DC 20503.

SUPPLEMENTARY INFORMATION: On September 14, 2012, a final notice was published in the **Federal Register** (77 FR 56842) finalizing the revisions to the FR Y–10, Report of Changes in Organizational Structure, and FR Y–6, Annual Report of Holding Companies (OMB No: 7100–0297), which included requiring nonbank financial companies supervised by the Federal Reserve and designated financial market utilities (DFMUs) to begin submitting these reports effective December 2012. Subsequent to the publication of the final notice, the Federal Reserve determined that the data collected in the FR Y–10 and FR Y–6 is not appropriately tailored for DFMUs, and structure data with respect to DFMUs that is necessary to populate certain databases can be initially generated internally. In addition, the final notice required nonbank financial companies supervised by the Board to submit the FR Y–10 and the FR Y–6 reports. Given that the Financial Stability Oversight Council has not made any final decision on designating nonbank financial companies as systemically important, the Federal Reserve believes it is more appropriate to determine the reporting requirements for these entities once they are identified. Accordingly, the Federal Reserve is removing the requirement for these entities to submit these reports effective December 2012.

Board of Governors of the Federal Reserve System, November 23, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–28850 Filed 11–28–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Breast and Cervical Cancer Early Detection Federal Advisory Committee

Correction: This notice was published in the **Federal Register** on November 5, 2012, Volume 77, Number 214, Page 66469. A teleconference line has been added for public participation. To participate, please dial toll-free 1 (866) 756–7359 and enter passcode 8958302 for access. Participation by teleconference is limited by the number of ports available.

Contact Person for More Information: Alicia Ortner, Committee Specialist, CDC, 4770 Buford Hwy, M/S K–57, Atlanta, Georgia 30341. Telephone (770) 488–4880. Email: *aortner@cdc.gov.* The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 21, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–28858 Filed 11–28–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0099]

Agency Information Collection Activities; Proposed Collection; Comment Request; Revision of the Requirements for Constituent Materials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments regarding the requirement for the use of constituent materials in licensed biological products.

DATES: Submit either electronic or written comments on the collection of information by January 28, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Revision of the Requirements for Constituent Materials in Biological Products—21 CFR 610.15(d) (OMB Control Number 0910–0666)—Extension

In the **Federal Register** of April 13, 2011 (76 FR 20513), FDA issued a final rule amending the regulation for the use of constituent materials in licensed biological products. Under 21 CFR 610.15(d), the Director of the Center for Biologics Evaluation and Research (CBER) or the Director of the Center for Drugs Evaluation and Research (CDER) may approve, as appropriate, a manufacturer's request for exceptions or alternatives to the regulation for constituent materials. Thus, the provision provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections. Manufacturers seeking approval of an exception or alternative must submit a request in writing. The request must be clearly identified with a brief statement describing the basis for the request and the supporting data. The request may be submitted as part of the original biologics application, as an amendment to the original, pending application or as a prior approval supplement to an approved application. The information to be collected assists FDA in identifying and reviewing requests for an exception or alternative to the requirements for constituent materials.

Respondents to this information collection provision are manufacturers of biological products. Since implementation of the final rule, FDA has received no submissions of requests for an exception or alternative for constituent materials. Therefore, FDA is estimating one respondent and annual response annually to account for a possible submission to CBER or CDER of a request for an exception or alternative for constituent materials. The average burden per response is based on FDA experience with similar information collection requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
610.15	1	1	1	1	1

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28907 Filed 11–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1038]

Draft Guidance for Industry: Preclinical Assessment of Investigational Cellular and Gene Therapy Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Preclinical Assessment of Investigational Cellular and Gene Therapy Products,'' dated November 2012. The draft guidance document provides sponsors and individuals that design and implement preclinical studies with recommendations on the substance and scope of preclinical information needed to support clinical trials for investigational products regulated by the Center for Biologics Research and Evaluation (CBER), Office of Cellular, Tissue, and Gene Therapies (OCTGT). The product areas covered by this guidance are cellular therapy, gene therapy, therapeutic vaccination, and xenotransplantation. The guidance is intended to clarify current expectations regarding the preclinical information that supports an investigational new drug application (IND) and a biologics license application (BLA) for these product areas.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 27, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), CBER, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Preclinical Assessment of Investigational Cellular and Gene Therapy Products,'' dated November 2012. The draft guidance document provides sponsors and individuals that design and implement preclinical studies with recommendations on the substance and scope of preclinical information needed to support clinical trials for investigational products regulated by OCTGT. The product areas covered by this guidance are cellular therapy, gene therapy, therapeutic vaccination, and xenotransplantation. The guidance is intended to clarify current expectations regarding the preclinical information that supports an IND and a BLA for these product areas.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 has been approved under 0910–0014; the collections of information in 21 CFR part 601 has been approved under 0910–0338; and the collections of information in 21 CFR part 58 has been approved under 0910–0119.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28882 Filed 11–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 5, 2013 from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879. The hotel phone number is 301–948–8900.

Contact Person: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1611, Silver Spring, MD 20993–0002, *Jamie.Waterhouse@fda.hhs.gov*, 301–796–3063, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On April 5, 2013, the committee will discuss and make recommendations regarding the possible reclassification of Shortwave Diathermy devices. On July 6, 2012 (77 FR 39953), FDA issued a proposed rule which, if made final, would make Shortwave Diathermy devices Class III, requiring premarket approval. In response to the proposed rule, FDA received petitions under section 515(b)(2)(B) of the Federal Food, Drug, and Cosmetic Act requesting a change in classification. The reclassification petitions are available for public review and comment at *www.regulations.gov* under docket number FDA–2012–N–0378.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 1, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 21, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 25, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Committee Management Staff, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 23, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28855 Filed 11–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5648–N–03]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2013; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2013 Fair Market Rents (FMRs).

SUMMARY: This notice updates the FMRs for Hood River County, OR, based on a survey of rents conducted by the Public Housing Agency (PHA) in August 2012.

DATES: *Effective Date:* October 1, 2012.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2013 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590.

Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The FY 2012 FMRs for Hood River County, OR, were over 20 percent lower than they were in FY 2011. While FMRs for Hood River County increased in FY 2013, they were still about 10 percent lower than they were in FY 2011. The PHA was having trouble managing its program with these lower FMR levels and so they conducted a survey of rents for Hood River County. The results of this survey were provided to HUD in mid-September, which was too late in the FMR review process to be included in the FY 2013 FMR final notice.

HUD has reviewed the survey data and determined that the FY 2013 FMRs for Hood River County, OR, are revised as follows:

FMR BY NUMBER OF BEDROOMS IN UNIT

FY 2013 FMR Area	0 BR	1 BR	2 BR	3 BR	4 BR
Hood River County, OR	$671	$701	$831	$1225	$1335

Dated: October 23, 2012.

Erika C. Poethig,

Acting Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–28920 Filed 11–28–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On November 20, 2012, the Department of Justice lodged a proposed consent decree with the United States District Court for the Middle District of Louisiana in the lawsuit entitled *United States and Louisiana Department of Environmental Quality* v. *Louisiana Generating LLC,* Civ. No. 09–100–JJB (M.D. La.).

The United States filed a complaint in February 2009, seeking injunctive relief and civil penalties for violations of the Prevention of Significant Deterioration (''PSD'') provisions of the Clean Air Act (''CAA''), 42 U.S.C. 7470–92; the federally approved PSD regulations contained in the Louisiana State Implementation Plan (''SIP''); and the federally approved Louisiana Title V program, 42 U.S.C. 7661a–76661f (''Title V'') at the Big Cajun II, the Defendant's coal fired power plant in New Roads, Louisiana.. The Louisiana Department of Environmental Quality (''LDEQ'') filed a complaint in February 2010 alleging the same violations as are in the United States' complaint.

The complaints allege that Louisiana Generating failed to obtain appropriate permits and failed to install and operate required pollution control devices to reduce emissions of various air pollutants at two coal-fired generating units at the company's Big Cajun II plant. The proposed consent decree would require Louisiana Generating to reduce harmful emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) through emission control requirements and limitations specified by the proposed Decree, including installation and operation of new pollution controls, natural gas conversion, and annual emission caps at all three units at the Big Cajun II plant. Louisiana Generating will also spend $10.5 million to fund environmental mitigation projects that will further reduce emissions and benefit communities adversely affected by pollution from the Big Cajun II plant, and pay a civil penalty of $3.5 million. The State of Louisiana will receive $1.75 million, one-half of the $3.5 million civil penalty.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Louisiana Department of Environmental Quality* v. *Louisiana Generating LLC,* Civ. No. 09–100–JJB (M.D. La.) D.J. Ref. No. 90–5–2–1–08529. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $19.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–28884 Filed 11–28–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Jobs for Veterans State Grants Reports

ACTION: Notice.

SUMMARY: On November 30, 2012, the Department of Labor (DOL) will submit the Veterans' Employment and Training Service (VETS) sponsored information collection request (ICR) revision titled, ''Jobs for Veterans State Grants Reports,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before December 31, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* as of December 1, 2012, or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–VETS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The VETS administers funds for multi-year Jobs for Veterans State Grants given to each State, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam on an annual basis on a fiscal year cycle. This information collection is used to facilitate the identification of required programmatic and financial data provided by States requesting and expending funds and for monitoring the grants, making quarterly adjustments and reporting results to Congress. The use of program-specific standard formats helps to ensure that requested data can be provided in a uniform way, reporting burdens are minimized, the impact of collection requirements on respondents are properly assessed, collection instruments are clearly understood by respondents, and the information is easily consolidated for posting in accordance with statutory requirements. Reporting instruments under this ICR are: Manager's Report on Services to Veterans and Forms VETS–201, VETS–401, VETS–402A, VETS–501, and VETS–601.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1293–0009. The current approval is scheduled to expire on November 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 27, 2012 (77 FR 59421).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by December 31, 2012. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1293–0009. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–VETS.

Title of Collection: Jobs for Veterans State Grants Reports.

OMB Control Number: 1293–0009.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 57.

Total Estimated Number of Responses: 8,714.

Total Estimated Annual Burden Hours: 17,401.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–28903 Filed 11–28–12; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Distribution of Characteristics of the Insured Unemployed

ACTION: Notice.

SUMMARY: On November 30, 2012, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Distribution of Characteristics of the Insured Unemployed,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before December 31, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, as of December 1, 2012, or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Distribution of Characteristics of the Insured Unemployed Report, Form ETA–203, is a once a month snapshot of the demographic composition of the claimant population. The information is based in each State on the universe or a sample of those who file a claim in the week containing the 19th of the month, which reflects unemployment experienced during the week containing the 12th. This corresponds with the Current Population Survey sample week used by the Bureau of Labor Statistics. Aggregate data is collected on the items gender, race/ethnic group, age, industry, and occupation. This report is the only source of current, consistent demographic information (age, race/ethnic, sex, occupation, industry) on the Unemployment Insurance (UI) claimant population. These characteristics identify important claimant cohorts for legislative, economic and social planning purposes, and evaluation of

the UI program on the Federal and State levels.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0009. The current approval is scheduled to expire on November 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 13, 2012 (77 FR 48174).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by December 31, 2012. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0009. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Distribution of Characteristics of the Insured Unemployed.

OMB Control Number: 1205–0009.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 636.

Total Estimated Annual Burden Hours: 212.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 21, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–28904 Filed 11–28–12; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–133; NRC–2012–0288]

Environmental Assessment and Finding of No Significant Impact Related to Exemption From the Implementation Deadline for Certain New Emergency Preparedness Regulations for the Humboldt Bay Power Plant, Unit No. 3, License DPR–007, Eureka, CA

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

FOR FURTHER INFORMATION CONTACT: John Hickman, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Mail Stop: T8F5, Washington, DC 20555–00001; telephone: 301–415–3017; email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering a request dated June 19, 2012, by Pacific Gas and Electric Company (PG&E, the licensee) for a schedular exemption which would extend the date for implementing portions of the Final Rule for Enhancements to Emergency Preparedness Regulations (Final Rule) from June 20, 2012 to September 20, 2012.

This Environmental Assessment (EA) has been developed in accordance with the requirements of section 51.21 of Title 10 of the *Code of Federal Regulations* (10 CFR).

II. Environmental Assessment

Identification of Proposed Action

On July 2, 1976, Humboldt Bay Power Plant (HBPP) Unit 3 was shut down for annual refueling and to conduct seismic modifications. The unit was never restarted. In 1983, updated economic analyses indicated that restarting Unit 3 would probably not be cost-effective, and in June 1983, PG&E announced its intention to decommission the unit. On July 16, 1985, the NRC issued Amendment No. 19 to the HBPP Unit 3 Operating License to change the status to possess-but-not-operate (Agencywide Documents Access and Management System (ADAMS) Accession No. ML8507260045). In December of 2008, the transfer of spent fuel from the fuel storage pool to the dry-cask Independent Spent Fuel Storage Installation (ISFSI) was completed, and the decontamination and dismantlement phase of HBPP Unit 3 decommissioning commenced. Active decommissioning is currently underway.

The NRC issued the Final Rule in the **Federal Register** on November 23, 2011 (76 FR 72560). The Final Rule amends certain emergency preparedness (EP) requirements in the regulations. The amended requirements enhance the ability of licensees in preparing to take and taking certain EP and protective measures in the event of a radiological emergency; address, in part, security issues identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent emergency plan implementation among licensees; and modify certain EP requirements to be more effective and efficient. Certain portions of the Final Rule are required to be implemented by June 20, 2012, while other portions of the Final Rule have later implementation dates. The PG&E is requesting the schedular exemption to allow sufficient time to evaluate the Final Rule and to implement provisions, as necessary. The proposed exemption would provide only temporary relief from the applicable regulation. Specifically, PG&E requests exemptions from meeting the implementation deadline for the following revised requirements:

For Security-Related Emergency Plan Issues:

Emergency Action Levels for Hostile Action (10 CFR Part 50, App. E, IV.B.1.)

Emergency Response Organization Augmentation at Alternate Facility—capability for staging emergency organization personnel at an alternate facility and the capability for communications with the control room

and plant security (10 CFR Part 50, App. E, IV.E.8.d.)

Protection for Onsite Personnel (10 CFR Part 50, App. E, IV.I)

For Non-Security Related Issues:

Emergency Declaration Timeliness (10 CFR Part 50, App. E, IV.C.2.)

Emergency Operations Facility—Performance Based Approach (10 CFR Part 50, App. E, IV.E.8.a.–c.)

Need for Proposed Action

The PG&E asserts that the Final Rule does not provide clear direction for defueled, non-operating facilities such as HBPP, and it does not include ISFSI license emergency plans. Therefore, PG&E is still evaluating the applicability of the Final Rule to HBPP.

Environmental Impacts of the Proposed Action

Due to HBPP being permanently shut down (with spent fuel relocated to the ISFSI) and the necessary 10 CFR Part 20 required radiological controls in place to limit doses, there are no postulated accidents for HBPP that are considered credible that could result in the release of radioactive materials to the environment in quantities that would require the implementation of protective actions for the general public. There are also no postulated accidents for the ISFSI that could result in the release of radioactive materials to the environment in quantities that would require the implementation of protective actions for the general public. Therefore, because the current Humboldt Bay site emergency program provides adequate radiological protection for the public, the delayed implementation of the five Final Rule requirements identified above presents no potential increase in release of radioactive materials to the environment in quantities that would require the implementation of protective actions for the general public.

Because HBPP is permanently defueled and the spent fuel is stored in the onsite ISFSI, the NRC has determined that the plant site poses a significantly reduced risk to public health and safety from design basis accidents or credible beyond design basis accidents. (''Emergency Planning Licensing Requirements for Independent Spent Fuel Storage Facilities (ISFSI) and Monitored Retrievable Storage Facilities (MRS)'' (60 FR 32430, 32431; June 22, 1995)) The PG&E has stated that accidents cannot result in radioactive releases which exceed the EPA's protective action guidelines at the site boundary. Granting the proposed scheduler exemption would not increase the probability or consequences of accidents, no changes are being made in the types or quantities of effluents that may be released offsite, and there would be no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with granting the exemption request.

Granting the proposed schedular exemption would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As stated above there are no significant environmental impacts from the proposed action. Therefore, the only alternative the NRC considered is the no-action alternative, under which the NRC would deny the exemption request. This denial of the request would require the licensee to implement the revised emergency preparedness requirements immediately. The facility currently poses an insignificant environmental impact risk due to the permanently shutdown status with fuel in the ISFSI. Therefore, imposing more emergency preparedness requirements to further limit environmental impact would not result in a significant change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar and the no-action alternative is accordingly not further considered.

Conclusion

The NRC has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC contacted the California Radiologic Health Branch in the State Department of Health Services concerning this request. There were no comments, concerns or objections from the State official.

The NRC has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1536. The NRC has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470.

III. Finding of No Significant Impact

The NRC has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application and supporting documentation, are available electronically at the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access ADAMS, which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

(1) Final rule, ''Enhancements to Emergency Preparedness Regulations,'' November 23, 2011. [76 FR 72560]

(2) Letter dated June 19, 2012, ''Humboldt Bay Power Plant Unit 3 Request for Schedular Exemption for Implementation of Final Rule for Enhancements to Emergency Preparedness Regulations'' [ADAMS Accession Number ML12187A235].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 20th day of November, 2012.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–28888 Filed 11–28–12; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Initial Certification of Full-Time School Attendance, RI 25–41

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0099, Initial Certification of Full-Time School Attendance. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 4, 2012 at Volume 77 FR 33007 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until December 31, 2012. This process is conducted in accordance with 5 CFR 1320.1.

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, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Initial Certification of Full-Time School Attendance.

OMB Number: 3206–0099.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 90 minutes.

Total Burden Hours: 1,800.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–28896 Filed 11–28–12; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of Council Meeting.

SUMMARY: The Hispanic Council on Federal Employment (HCFE) will hold a meeting on Monday, December 13th, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: December 13th 2012, from 2:00–4:00 p.m.

Location: U.S. Office of Personnel Management, 1900 E Street NW., Room 2316C, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Washington, DC 20415. Phone (202) 606–0040 FAX (202) 606–2183 or email at *Jesse.Frank@opm.gov*.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–28893 Filed 11–28–12; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0140, Representative Payee Application (RI 20–7) and Information Necessary for a Competency Determination (RI 30–3)

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0140, Representative Payee Application (RI 20–7) and Information Necessary for a Competency Determination (RI 30–3). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 28, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, Union Square Room US 370, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Representative Payee Application and Information Necessary for a Competency Determination.

OMB Number: 3206–0140.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: RI 20–7 = 12,480; RI 30–3 = 250.

Estimated Time per Respondent: 90.

Total Burden Hours: 6,490.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–28894 Filed 11–28–12; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68286; File No. S7–04–09]

Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations From Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment

November 26, 2012.

I. Introduction

On May 19, 2010, the Securities and Exchange Commission (''Commission'') conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations (''NRSROs'') from certain requirements in Rule 17g–5(a)(3) [1] under the Securities Exchange Act of 1934 (''Exchange Act''), which had a compliance date of June 2, 2010.[2] Pursuant to the Order, an NRSRO is not required to comply with Rule 17g–5(a)(3) until December 2, 2010 with respect to credit ratings where: (1) The issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S. (''covered transactions'').[3] On November 23, 2010, the Commission extended the conditional temporary exemption until December 2, 2011.[4] On November 16, 2011, the Commission extended the conditional temporary exemption until December 2, 2012.[5] The Commission is extending the temporary conditional exemption exempting NRSROs from complying with Rule 17g–5(a)(3) with respect to rating covered transactions until December 2, 2013.

II. Background

Rule 17g–5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.[6] Paragraph (a) of Rule 17g–5 [7] prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g–5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (*i.e.,* disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act [8] and Rule 17g–1) [9] and paragraph (a)(2) (*i.e.,* established and is maintaining and enforcing written policies and procedures to address and manage conflicts of interest in accordance with Section 15E(h) of the Exchange Act).[10] Paragraph (c) of Rule 17g–5 specifically prohibits seven types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In December 2009, the Commission adopted subparagraph (a)(3) to Rule 17g–5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating—and subsequently monitor that credit rating—for the structured finance product.[11] In particular, under Rule 17g–5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict of interest identified in paragraph (b)(9) of Rule 17g–5 (*i.e.,* being hired by an arranger to determine a credit rating for a structured finance product) [12] unless it has taken the steps

[1] *See* 17 CFR 240.17g–5(a)(3).

[2] *See* Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) (''Order'').

[3] *See id.* at 28827–28 (setting forth conditions of relief).

[4] *See* Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) (''First Extension Order'').

[5] *See* Exchange Act Release No. 65765 (Nov. 16, 2011), 76 FR 72227 (Nov. 22, 2011) (''Second Extension Order'').

[6] 17 CFR 240.17g–5(b) and (c).

[7] 17 CFR 240.17g–5(a).

[8] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[9] 17 CFR 240.17g–1.

[10] 15 U.S.C. 78o–7(h).

[11] *See* 17 CFR 240.17g–5(a)(3); *see also* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009) (''Adopting Release'') at 63844–45.

[12] Paragraph (b)(9) of Rule 17g–5 identifies the following conflict of interest: Issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities

Continued

prescribed in paragraphs (a)(1) and (2) of Rule 17g–5 (discussed above) and the steps prescribed in new paragraph (a)(3) of Rule 17g–5.[13] Rule 17g–5(a)(3), among other things, requires that the NRSRO must:

- Maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating in chronological order and identifying the type of structured finance product, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the arranger represents the information provided to the hired NRSRO can be accessed by other NRSROs;
- Provide free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g–5 that covers that calendar year; [14] and
- Obtain from the arranger a written representation that can reasonably be relied upon that the arranger will, among other things, disclose on a password-protected Internet Web site the information it provides to the hired NRSRO to determine the initial credit rating (and monitor that credit rating) and provide access to the Web site to an NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g–5.[15]

The Commission stated in the Adopting Release that subparagraph Rule 17g–5(a)(3) is designed to address conflicts of interest and improve the quality of credit ratings for structured finance products by making it possible for more NRSROs to rate structured finance products.[16] For example, the Commission noted that when an NRSRO is hired to rate a structured finance product, some of the information it relies on to determine the rating is generally not made public.[17] As a result, structured finance products frequently are issued with ratings from only the one or two NRSROs that have been hired by the arranger, with the attendant conflict of interest that creates.[18] The Commission stated that subparagraph Rule 17g–5(a)(3) was designed to increase the number of credit ratings extant for a given structured finance product and, in particular, to promote the issuance of credit ratings by NRSROs that are not hired by arrangers.[19] The Commission's goal in adopting the rule was to provide users of credit ratings with more views on the creditworthiness of structured finance products.[20] In addition, the Commission stated that Rule 17g–5(a)(3) was designed to reduce the ability of arrangers to obtain better than warranted ratings by exerting influence over NRSROs hired to determine credit ratings for structured finance products.[21] Specifically, by opening up the rating process to more NRSROs, the Commission intended to make it easier for the hired NRSRO to resist such pressure by increasing the likelihood that any steps taken to inappropriately favor the arranger could be exposed to the market through the credit ratings issued by other NRSROs.[22]

Rule 17g–5(a)(3) became effective on February 2, 2010, and the compliance date for Rule 17g–5(a)(3) was June 2, 2010.

III. Extension of Conditional Temporary Extension

In the Order, the Commission requested comment generally, but also on a number of specific issues.[23] The Commission received six comment letter in response to this solicitation of comment.[24] The commenters expressed concern that the extraterritorial application of Rule 17g–5(a)(3) could, in the commenter's view, among other things, disrupt local securitization markets,[25] inhibit the ability of local

transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument. 17 CFR 240.17g–5(b)(9).

[13] 17 CFR 240.17g–5(a)(3).

[14] Paragraph (e) of Rule 17g–5 requires that an NRSRO seeking to access the hired NRSRO's Internet Web site during the applicable calendar year must furnish the Commission with the following certification:

The undersigned hereby certifies that it will access the Internet Web sites described in 17 CFR 240.17g–5(a)(3) solely for the purpose of determining or monitoring credit ratings. Further, the undersigned certifies that it will keep the information it accesses pursuant to 17 CFR 240.17g–5(a)(3) confidential and treat it as material nonpublic information subject to its written policies and procedures established, maintained, and enforced pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o–7(g)(1)) and 17 CFR 240.17g–4. Further, the undersigned certifies that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to 17 CFR 240.17g–5(a)(3)(iii), if it accesses such information for 10 or more issued securities or money market instruments in the calendar year covered by the certification. Further, the undersigned certifies one of the following as applicable: (1) In the most recent calendar year during which it accessed information pursuant to 17 CFR 240.17g–5(a)(3), the undersigned accessed information for [Insert Number] issued securities and money market instruments through Internet Web sites described in 17 CFR 240.17g–5(a)(3) and determined and maintained credit ratings for [Insert Number] of such securities and money market instruments; or (2) The undersigned previously has not accessed information pursuant to 17 CFR 240.17g–5(a)(3) 10 or more times during the most recently ended calendar year.

[15] In particular, under paragraph (a)(3)(iii) of Rule 17g–5, the arranger must represent to the hired NRSRO that it will:

(1) Maintain the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of Rule 17g–5 available at an identified password-protected Internet Web site that presents the information in a manner indicating which information currently should be relied on to determine or monitor the credit rating;

(2) Provide access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g–5 that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either: (i) Determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to paragraph (a)(3)(iii) of Rule 17g–5 in the calendar year prior to the year covered by the certification, if it accessed such information for 10 or more issued securities or money market instruments; or (ii) has not accessed information pursuant to paragraph (a)(3) of Rule 17g–5 10 or more times during the most recently ended calendar year;

(3) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of determining the initial credit rating for the security or money market instrument, including information about the characteristics of the assets underlying or referenced by the security or money market instrument, and the legal structure of the security or money market instrument, at the same time such information is provided to the NRSRO; and

(4) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of undertaking credit rating surveillance on the security or money market instrument, including information about the characteristics and performance of the assets underlying or referenced by the security or money market instrument at the same time such information is provided to the NRSRO.

[16] Adopting Release at 63844.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See* Order at 28828.

[24] Letter from Masamichi Kono, Vice Commissioner for International Affairs, Financial Services Agency, Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 (''Japan FSA Letter''); Letter from Masaru Ono, Executive Director, Securitization Forum of Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 (''SFJ Letter''); Letter from Rick Watson, Managing Director, Association for Financial Markets in Europe/European Securitisation Forum, to Elizabeth Murphy, Secretary, Commission, dated Nov. 11, 2010 (''AFME Letter''); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, to Randall Roy, Assistant Director, Division of Trading and Markets (''Division''), Commission, dated Sep. 22, 2010 (''IIAC Letter''); Letter from Christopher Dalton, Chief Executive Officer, Australian Securitisation Forum, to Randall Roy, Assistant Director, Division, Commission, dated Jun. 27, 2010 (''AuSF Letter''); Letter from Takefumi Emori, Managing Director, Japan Credit Rating Agency, Ltd. (''JCR'') to Elizabeth Murphy, Secretary, Commission, dated Jun. 25, 2010 (''JCR Letter'').

[25] *See* Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter; AuSF Letter.

firms to raise capital,[26] and conflict with local laws.[27] Several commenters also requested that the conditional temporary exemption be extended or made permanent.[28] The First Extension Order again solicited public comment on issues raised in connection with the extra-territorial application of Rule 17g–5(a)(3).[29] One commenter requested that the Order be made permanent, citing many of the same reasons set forth in prior comment letters.[30] The Second Extension Order again solicited public comment on issues raised in connection with the extra-territorial application of Rule 17g–5(a)(3).[31] Commenters supported the exemption regarding the extra-territorial application of the Rule,[32] with one of those commenters again requesting that the Order be made permanent.[33]

Given the continued concerns about potential disruptions of local securitization markets, and because the Commission's consideration of the issues raised will benefit from additional time to engage in further dialogue with interested parties and to monitor market and regulatory developments, the Commission believes extending the conditional temporary exemption until December 2, 2013 is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[26] *See* AFME Letter; JCR Letter; AuSF Letter.

[27] *See* Japan FSA Letter; AFME Letter; JCR Letter; AuSF Letter; IIAC Letter. With respect to local laws, we note that the European Commission in recent months has issued a relevant proposal for amendments to the European Union Regulation on Credit Ratings. *See* ''Regulation of the European Parliament and of the Counsel on amending Regulation (EC) No 1060/2009 on credit rating agencies'' (available at *http://ec.europa.eu/internal_market/securities/docs/agencies/100602_proposal_en.pdf*).

[28] *See* Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter.

[29] *See* Letter from Tom Deutsch, Executive Director, American Securitization Forum, and Chris Dalton, Chief Executive Officer, Australian Securitization Forum, to Randall Roy, Assistant Director, and Joseph Levinson, Special Counsel, Division, Commission, dated Aug. 9, 2011 (''ASF/AuSF Letter 1''); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, to Randall Roy, Assistant Director, Division, Commission, dated Nov. 2, 2011 (''IIAC Letter 2'').

[30] *See* ASF/AuSF Letter 1.

[31] Letter from Chris Barnard to the Commission, dated Nov. 23, 2011 (''Barnard Letter''); Letter from Tom Deutsch, Executive Director, American Securitization Forum and Chris Dalton, Chief Executive Officer, Australian Securitisation Forum, to Thomas Butler, Director, Office of Credit Ratings, Randall Roy, Associate Director, and Joseph Levinson, Special Counsel, Division, dated Aug. 28, 2012 (''ASF/AuSF Letter 2'').

[32] *See* Barnard Letter; ASF/AuSF Letter 2.

[33] *See* ASF/AuSF Letter 2.

IV. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/exorders.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–04–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–04–09. This file number should be included on the subject line if email is used. To help us 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/exorders.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St. NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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.

V. Conclusion

For the foregoing reasons, the Commission believes it would be necessary or appropriate in the public interest and consistent with the protection of investors to extend the conditional temporary exemption exempting NRSROs from complying with Rule 17g–5(a)(3) with respect to rating covered transactions until December 2, 2013.

Accordingly,

It is hereby ordered, pursuant to Section 36 of the Exchange Act, that a nationally recognized statistical rating organization is exempt until December 2, 2013 from the requirements in Rule 17g–5(a)(3) (17 CFR 240.17g–5(a)(3)) for credit ratings where:

(1) The issuer of the security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(2) The nationally recognized statistical rating organization has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–28900 Filed 11–28–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, December 3, 2012 at 2:00 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2) and (6) and 17 CFR 200.402(a)(2) and (6), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the item listed for the closed meeting in closed session.

The subject matter of the Closed Meeting will be a personnel-related matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 26, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–28952 Filed 11–27–12; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 28, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335–404.338, & 404.603—0960–0004. Since SSA needs information to make a formal determination for entitlement to widow(er)'s benefits, we use Form SSA–10–BK to determine whether an applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s title II benefits. SSA employees interview individuals applying for benefits either face-to-face or via telephone and enter the information on the paper form or into the Modernized Claims System (MCS). The respondents are applicants for widow(er)'s benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–10–BK—paper version	5,000	1	15	1,250
SSA–10–BK—MCS version	449,000	1	14	104,767
Total	454,000			106,017

2. Statement for Determining Continuing Eligibility Supplemental Security Income Payment—20 CFR 416.204—0960–0145. SSA uses Form SSA–8202–BK to conduct low and middle error profile telephone or face-to-face redetermination interviews with Supplemental Security Income (SSI) recipients and representative payees (RP). The information SSA collects during the interview is necessary to determine whether SSI recipients met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they received, and are still receiving, the correct payment amount.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8202–BK	6,633	1	21	2,322
Modernized SSI Claims System	71,444	1	20	23,815
Total	78,077			26,137

3. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.917–404.921 and 416.1407–416.1421—0960–0351. When a claimant dies before we make a determination on that person's request for reconsideration of a disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency uses Form SSA–770 to collect information about whether to pursue or withdraw the reconsideration request. We use this information as the basis for the decision to continue or discontinue with the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–770	1,200	1	5	100

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 31, 2012. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Reporting Changes that Affect Your Social Security Payment—20 CFR 404.301–305, 404.310–311, 404.330–.333, 404.335–.341, 404.350–.352, and 404.468—0960–0073. When Social Security beneficiaries experience a change that could affect their payments, they must report these changes to SSA. Title II beneficiaries in this category use Form SSA–1425 to report the relevant information to SSA; the agency then determines if the respondents continue to be entitled to benefits, and if so, the proper amount of these benefits. The respondents are Social Security beneficiaries receiving title II SSA retirement, disability, or survivor's auxiliary benefits who need to report an event that could affect their payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1425	70,000	1	5	5,833

2. State Supplementation Provisions: Agreement; Payments—20 CFR 416.2095–416.2098, 416.2099—0960–0240. Section 1618 of the Social Security Act (Act) contains pass-along provisions of the Social Security amendments. These provisions require states that supplement Federal SSI payments to pass along Federal cost-of-living increases to individuals who are eligible for state supplemental payments. If a state fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under title XIX of the Act. SSA uses the information to determine a state's eligibility for Medicaid reimbursement. Respondents are state agencies administering supplemental programs.

Type of Request: Extension of an OMB-approved information collection.

State reporting method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Total Expenditures	7	4	60	28
Maintenance of Payment Levels	24	1	60	24
Total	31	.....	.....	52

3. Substitution of Party Upon Death of Claimant—20 CFR 404.957(c)(4) and 416.1457(c)(4)—0960–0288. An administrative law judge (ALJ) may dismiss a request for a hearing on a pending claim of a deceased individual for Social Security benefits or SSI payments. Individuals who believe they may be adversely affected by the dismissal may ask to be a substitute party for the deceased claimant by completing Form HA–539. The ALJs and the hearing office support staff use this information to (1) maintain a written record of the request; (2) establish the relationship of the requester to the deceased claimant; (3) determine the substituted individual's wishes regarding an oral hearing or decision on the record; and (4) admit the data into the claimant's official record as an exhibit. The respondents are individuals requesting to be a substitute party for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden hours)
HA–539	4,000	1	5	333

4. Continuation of SSI Benefits for the Temporarily Institutionalized—Certification of Period and Need to Maintain Home—20 CFR 416.212(b)(1)—0960–0516. When SSI recipients (1) enter a public institution or (2) enter a private medical treatment facility with Medicaid paying more than 50 percent of expenses, SSA must reduce recipients' SSI payments to a nominal sum. However, if this institutionalization is temporary (defined as a maximum of three months), SSA may waive the reduction.

Before SSA can waive the SSI payment reduction, the agency must receive the following documentation: (1) A physician's certification stating the SSI recipient will only be institutionalized for a maximum of three months and (2) certification from the recipient, the recipient's family, or friends confirming SSI payments are needed to maintain the living arrangements to which the individual will return post-institutionalization. The respondents are SSI recipients, their family or friends, and doctors.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responsdents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden hours)
Certifications from physicians and other respondents	60,000	1	5	5,000

5. Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public—20 CFR 401.40(b)&(c), 401.55(b), 401.100(a), 402.130, 402.185—0960–0566. SSA established methods for the public to: (1) Access their SSA records; (2) allow SSA to disclose records; (3) correct or amend their SSA records; (4) consent to release of their records; (5) request records under the Freedom of Information Act (FOIA); and (6) request SSA waive or reduce fees normally charged for release of FOIA. SSA often collects the necessary information for these requests through a written letter, with the exception of the consent for release of records, for which there is Form SSA–3288. The respondents are individuals requesting access to, correction of, or disclosure of SSA records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden hours)
Access to Records	10,000	1	11	1,833
Designating a Representative for Disclosure of Records	3,000	1	120	6,000
Amendment of Records	100	1	10	17
Consent of Release of Records	3,000,000	1	3	150,000
FOIA Requests for Records	15,000	1	5	1,250
Waiver/Reduction of Fees	400	1	5	33
Total	3,028,500	.....	.....	159,133

6. Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, 416.665—0960–0576. SSA requires representative payees (RPs) to submit a written report accounting for the use of money paid to Social Security beneficiaries or SSI recipients, and to establish and maintain a dedicated account for these payments. SSA uses Form SSA–6233 to ensure the RPs are use the benefits for the beneficiary's or recipient's current maintenance and personal needs, and the expenditures of funds from the dedicated account are in compliance with the law. Respondents are RPs for SSI recipients and Social Security beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden hours)
SSA–6233	30,000	1	20	10,000

7. Application for Circuit Court Law—20 CFR 404.985 & 416.1458—0960–0581. Persons claiming an acquiescence ruling (AR) would change SSA's prior determination or decision must submit a written readjudication request with specific information. SSA reviews the information in the requests to determine if the issues stated in the AR pertain to the claimant's case, and if the claimant is entitled to readjudication. If readjudication is appropriate, SSA considers the issues the AR covers. Any new determination or decision is subject to administrative or judicial review as specified in the regulations. Respondents are claimants for Social Security benefits and SSI payments who request readjudication. This information collection request is for the information claimants must provide to request readjudication.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden hours)
AR-based Readjudication Requests	10,000	1	17	2,833

Dated: November 26, 2012.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2012–28891 Filed 11–28–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway and Bridge in the Cities of Cincinnati, Ohio, and Covington, Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; correction.

SUMMARY: This notice corrects an error in the FHWA notice published on November 2, 2012, at 77 FR 66215. That notice provided an incorrect reference to a statute of limitations timeframe, and an incorrect date.

DATES: This notice is effective November 29, 2012.

FOR FURTHER INFORMATION CONTACT: Noel F. Mehlo Jr., Environmental Program Manager, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6896; or Stefan Spinosa, PE, Ohio Department of Transportation (ODOT), 505 South State Route 741, Lebanon, Ohio 45036, Telephone: (513) 933–6639.

SUPPLEMENTARY INFORMATION: On November 2, 2012, at 77 FR 66215, the FHWA published a notice regarding actions taken by the FHWA, United States Army Corps of Engineers (USACE), and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project to improve Interstate 71 and Interstate 75, including interchanges and a new bridge over the Ohio River in the City of Cincinnati, Hamilton County, State of Ohio and the City of Covington, Kenton County, Commonwealth of Kentucky.

The original notice indicated that claims seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 1, 2013, which represents 180 days after publication in the **Federal Register**. However, the recently enacted ''Moving Ahead for Progress in the 21st Century Act'' (MAP–21) (Sec. 1308, Pub. L. 112–141, 126 STAT. 405), amended 23 U.S.C. 139(l)(1) as of October 1, 2012, to provide that any claim seeking judicial review of the Federal agency actions on a highway project is barred unless the claim is filed 150 days after publication of a notice in the **Federal Register**. As such, any claim seeking judicial review of the above referenced highway project will be barred unless the claim is filed on or before April 1, 2013. Also, if the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

Authority: 23 U.S.C. 139(l); Sec. 1308, Pub. L. 112–141, 126 Stat. 405.

Issued on: November 21, 2012.

Robert L. Griffith,

Assistant Division Administrator, Columbus, Ohio.

[FR Doc. 2012–28912 Filed 11–28–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 26, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 31, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at PRA@treasury.gov, or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0010.

Type of Review: Extension without change of a currently approved collection.

Title: Formula and Process for Wine.

Form: TTB F 5120.29.

Abstract: TTB F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form is used to describe the person filing, the type of product to be made, and the process by which the product is made. The form is also used to audit a product.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,200.

OMB Number: 1513–0028.

Type of Review: Revision of a currently approved collection.

Title: Application for an Industrial Alcohol User Permit.

Form: TTB F 5150.22.

Abstract: TTB F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum) and the use of tax-free alcohol under 27 CFR 22.41. This form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 419.

OMB Number: 1513–0047.

Type of Review: Extension without change of a currently approved collection.

Title: Distilled Spirits Records (TTB REC 5110/01) and Monthly Report of Production Operations.

Form: TTB F 5110.40.

Abstract: The information collected is used to account for proprietor's tax liability and adequacy of bond coverage, for protection of the revenue. The information also provides data to analyze trends in the industry, plan efficient allocation of field resources, and compile statistics for government economic analysis.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,600.

OMB Number: 1513–0048.

Type of Review: Revision of a currently approved collection.

Title: Registration of Distilled Spirits Plants and Miscellaneous Requests and Notices and Distilled Spirits Plans.

Form: TTB F 5110.41.

Abstract: The information provided by the applicants assists TTB in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant operations. In addition, both statutes and regulations allow variances from regulations, and the information collected enables TTB to determine whether a variance can be approved.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,471.

OMB Number: 1513–0057.

Type of Review: Revision of a currently approved collection.

Title: Letterhead Applications and Notices Relating to Wine (5120/2).

Abstract: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 825.

OMB Number: 1513–0074.

Type of Review: Extension without change of a currently approved collection.

Title: Airlines Withdrawing Stock from Customs Custody (TTB REC 5620/2).

Abstract: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. The required record shows the amount of spirits and wine withdrawn, flight identification, and Customs certification. As a result, it enables TTB to verify that tax is not due, allows spirits and wines to be traced, maintains accountability, and protects tax revenue. The collection of information is contained in 27 CFR 28.280 and 28.281.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,500.

OMB Number: 1513–0088.

Type of Review: Revision of a currently approved collection.

Title: Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims (TTB REC 5000/24).

Abstract: TTB is responsible for the collection of Federal excise taxes on firearms, ammunition, distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. These excise taxes are required to be collected on the basis of a return, and taxpayers are required to maintain appropriate records that support the information in the return.

Affected Public: Private Sector: Businesses or other for-profits, not-for-profit institutions; individuals or households.

Estimated Total Burden Hours: 503,921.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–28857 Filed 11–28–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 26, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 31, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0025.

Type of Review: Extension without change of a currently approved collection.

Title: Affiliations Schedule.

Form: 851.

Abstract: Form 851 provides IRS with information to ascertain (1) the names and identification numbers of the members of the affiliated group included in the consolidated return, (2) taxes paid by each member of the group, and (3) stock ownership; changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in section 1504 of the Code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 51,040.

OMB Number: 1545–0166.

Type of Review: Extension without change of a currently approved collection.

Title: Recapture of Investment Credit.

Form: 4255.

Abstract: IRC section 50(a) and § 1.47 require that taxpayers attach a statement to their return showing the computation of the recapture tax when investment credit property is disposed of before the end of the recapture period used in the original computation of the investment credit.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 129,492.

OMB Number: 1545–0239.

Type of Review: Extension without change of a currently approved collection.

Title: Statement by Person(s) Receiving Gambling Winnings.

Form: 5754.

Abstract: Section 3402(q)(6) of the IRC requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. The information on Form W–2G is used to ensure that recipients are properly reporting their income.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 40,800.

OMB Number: 1545–0644.

Type of Review: Extension without change of a currently approved collection.

Title: Gains and Losses From Section 1256 Contracts and Straddles.

Form: 6781.

Abstract: Form 6781 is used by taxpayers to compute their gains and losses from Section 1256 contracts and straddles and their special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 903,236.

OMB Number: 1545–0745.

Type of Review: Extension without change of a currently approved collection.

Title: LR–27–83 (TD 7882—final) Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks; LR–54–85 (TD 8050) Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

Abstract: LR–27–83 (TD 7882), requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–

85 (TD 8050), requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,140.

OMB Number: 1545–0996.

Type of Review: Extension without change of a currently approved collection.

Title: REG–130477–00; REG–130481–00 (TD 8987 -Final), Required Distributions From Retirement Plans.

Abstract: The regulations relate to the required minimum distribution from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 8,400.

OMB Number: 1545–1014.

Type of Review: Extension without change of a currently approved collection.

Title: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return; Schedule Q (Form 1066) Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss.

Form: 1066, Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 756,580.

OMB Number: 1545–1131.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–485–89 (TD 8400 -Final) Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

Abstract: Sections 988(c)(1)(D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition, sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,333.

OMB Number: 1545–1163.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8822—Change of Address (For Individual, Gift, Estate, or Generation-Skipping Transfer Tax Returns); Form 8822–B—Change of Address—Business.

Form: 8822, 8822–B.

Abstract: Form 8822 and 8822–B are used by taxpayers to furnish their change of address to the Internal Revenue Service. Form 8822 is used by individual taxpayers while Form 8822–B will be used by business taxpayers.

Affected Public: Private Sector: Businesses or other for-profits; Individuals or Households.

Estimated Total Burden Hours: 264,792.

OMB Number: 1545–1426.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–21–91 (TD 8656—Final) Section 6662—Imposition of the Accuracy-Related Penalty.

Abstract: These regulations provide guidance about substantial and gross valuation misstatements as defined in sections 6662(e) and 6662(h). They also provide guidance about the reasonable cause and good faith exclusion. The regulations apply to taxpayers who have transactions between persons described in section 482 and not section 482 transfer price adjustments.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 20,125.

OMB Number: 1545–1520.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2011–4 (Letter Rulings), Revenue Procedure 2011–5 (Technical Advice), Revenue Procedure 2011–6 (Determination Letters), and Revenue Procedure 2011–8 (User Fees).

Abstract: The information requested in Revenue Procedure 2011–4, Revenue Procedure 2011–5, Revenue Procedure 2011–6, and Revenue Procedure 2011–8 is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 178,146.

OMB Number: 1545–1535.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 97–19, Timely Mailing Treated as Timely Filing.

Abstract: Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,069.

OMB Number: 1545–1674.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2011–49, Master and Prototype and Volume Submitter Plans (previously Rev. Proc. 2005–16).

Abstract: The master and prototype and volume submitter revenue procedure sets forth the procedures for sponsors of master and prototype and volume submitter pension, profit-sharing and annuity plans to request an opinion letter or an advisory letter from the Internal Revenue Service that the form of a master or prototype plan or volume submitter plan meets the requirements of section 401(a) of the Internal Revenue Code. The information requested in sections 5.11, 8.02, 11.02, 12, 14.05 15.02, 18, and 24 of the master and prototype revenue procedure is in addition to the information required to be submitted with Forms 4461.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,058,850.

OMB Number: 1545–1801.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.

Abstract: This revenue procedure prescribes procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving contingent liability transactions that are the same or similar to those described in Notice 2001–17 (''contingent liability transactions''). There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 7,500.

OMB Number: 1545–1804.
Type of Review: Extension without change of a currently approved collection.
Title: New Markets Credit.
Form: 8874.
Abstract: Investors use Form 8874 to request a credit for equity investments in community development entities.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 32,464.

OMB Number: 1545–1814.
Type of Review: Extension without change of a currently approved collection.
Title: Changes in Corporate Control and Capital Structure.
Form: 1099–CAP.
Abstract: Any corporation that undergoes reorganization under § 1.6043–4T with stock, cash, and other property over $100 million must file Form 1099–CAP with the IRS shareholders.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 67.

OMB Number: 1545–1833.
Type of Review: Extension without change of a currently approved collection.
Title: Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.
Abstract: Revenue Procedure 2003–37 describes documentation and information a taxpayer that uses the fair market value method of apportionment of interest expense may prepare and make available to the Service upon request in order to establish the fair market value of the taxpayer's assets to the satisfaction of the Commissioner as required by Sec. 1.861–9T(g)(1)(iii). It also sets forth the procedures to be followed in the case of elections to use the fair market value method.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 625.

OMB Number: 1545–1837.
Type of Review: Extension without change of a currently approved collection.
Title: Revenue Procedure 2003–36, Industry Issue Program.
Abstract: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 2,000.

OMB Number: 1545–1972.
Type of Review: Extension without change of a currently approved collection.
Title: Supplemental Income and Loss.
Form: Schedule E (1040).
Abstract: Schedule E (Form 1040) is used by individuals to report their supplemental income. The data is used to verify that the items reported on the form is correct and also for general statistical use.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 284,599.

OMB Number: 1545–1974.
Type of Review: Revision of a currently approved collection.
Title: Profit and Loss from Business.
Form: Schedule C (1040).
Abstract: Schedule C (Form 1040) is used by individuals to report their business income, loss and expenses. The data is used to verify that the items reported on the form is correct and also for general statistical use.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 71,701,693.

OMB Number: 1545–1975.
Type of Review: Extension without change of a currently approved collection.
Title: Profit or Loss From Farming.
Form: Schedule F (1040).
Abstract: Schedule F (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form is correct and also for general statistical use.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 7,796,240.

OMB Number: 1545–1998.
Type of Review: Extension without change of a currently approved collection.
Title: Alternative Motor Vehicle Credit.
Form: 8910.
Abstract: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 115,900.

OMB Number: 1545–2003.
Type of Review: Extension without change of a currently approved collection.
Title: Notice 2006–24, Qualifying Advanced Coal Project Program.
Abstract: This notice establishes the qualifying advanced coal project program under Sec. 48A of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying advanced coal project credits and, once the taxpayer has received this allocation, the time and manner for the taxpayer to file for a certification of its qualifying advanced coal project.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 4,950.

OMB Number: 1545–2008.
Type of Review: Extension without change of a currently approved collection.
Title: Nonconventional Source Fuel Credit.
Form: 8907.
Abstract: Form 8907 will be used to claim a credit from the production and sale of fuel created from nonconventional sources. For tax years ending after 12/31/05 fuel from coke or coke gas can qualify for the credit, and the credit becomes part of the general business credit.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 171,160.

OMB Number: 1545–2011.
Type of Review: Extension without change of a currently approved collection.
Title: Certification of Intent to Adopt a Pre-approved Plan.
Form: 8905.
Abstract: Use Form 8905 to treat an employer's plan as a pre-approved plan and therefore eligible for the six-year remedial amendment cycle of Part IV of Revenue Procedure 2005–66, 2005–37 I.R.B. 509.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 110,490.

OMB Number: 1545–2140.
Type of Review: Extension without change of a currently approved collection.
Title: Airplane Payments Report.
Form: 8935, 8935–T.
Abstract: Form 8935 will provide to the employee, current or former, the amount of the payment that was received from the airline that is eligible for rollover treatment into a Roth IRA. Form 8935–T is a transmittal form developed for filing information reporting Forms 8935, Airline Payments Reports, with the Service via paper filing.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 44.

OMB Number: 1545–2141.

Type of Review: Extension without change of a currently approved collection.

Title: NOT–2009–31—Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.

Abstract: The guidance in this notice implements temporary, elective relief under the Workers, Retirees, and Employers Relief Act of 2008 (WRERA), for multiemployer pension plans from certain funding requirements.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,600.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–28895 Filed 11–28–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Request for Information: Establish a Public-Private Collaboration, ''Drug Development Initiative'' (DDI), for New Pharmacological Treatments for Post-Traumatic Stress Disorder (PTSD)

AGENCY: Office of Research and Development (ORD).

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) ORD publishes this Request for Information (RFI) to solicit interest in forming public-private collaborations to develop new pharmacological treatments for PTSD. ORD is interested in developing collaborations with organizations that are interested in pursuing clinical trials specifically focused on PTSD. Such research would be detailed through a Cooperative Research and Development Agreement (CRADA) under the authority of the Federal Technology Transfer Act of 1986 (FTTA), Public Law 99–502, codified as amended in scattered sections of title 15, United States Code (U.S.C.). The CRADA will delineate the collaboration for PTSD treatment intended to test new drugs to benefit Veterans.

DATES: This notice will remain open to accept inquiries and responses.

FOR FURTHER INFORMATION CONTACT: Interested parties should contact Theresa Gleason, Ph.D., Senior Program Manager, Clinical Science Research and Development Service at (202) 443–5697 or by email at *CLINreview@va.gov* to provide an intention to participate. Please use the subject line: ''DDI.''

SUPPLEMENTARY INFORMATION: ORD has long supported a robust research portfolio of studies focused on understanding and treating PTSD, a disorder prevalent in Veterans. VA research has contributed extensively to advancing knowledge regarding the neurobiological underpinnings and leading advances in treatment research through clinical trials, especially in the area of psychotherapeutic approaches. Our program has the capability to conduct small/early to large/definitive multi-site clinical trials with the support of the VA Cooperative Studies Program. To identify and test new drug therapies for PTSD and to address the continuing need to treat Veterans with this disorder is of high interest to VA. This RFI is an invitation for responses from entities interested in participating in this DDI focused on new pharmacological treatments for PTSD.

Collaborations will be delineated via a CRADA under the authority of the FTTA at 15 U.S.C. 3710a. Under the FTTA, VA and the entity may exchange personnel, services, facilities, equipment, intellectual property, or other resources. No Federal funds may be provided to any third party collaborator, but the VA laboratory is authorized to accept funds. VA may grant to the collaborator party a license or an assignment to inventions made under the CRADA. We will select collaborators based on a mutually beneficial relationship that is fair and equitable and scientifically sound with the goal of advancing treatment for PTSD.

Responses to this RFI should include the following information:

a. Company profile;

b. Name, contact, and function of company representative; and

c. Brief rationale for proposed compound as candidate to be tested as new treatment for PTSD. Please do not include proprietary, classified, confidential, or sensitive information in your response, but provide scientific basis for the use of the compound and the general status of testing completed to date in human subjects (if any).

We will evaluate DDI responses for interest. Selected potential collaborators may be invited to discussions to develop a CRADA and plan potential trials. Non-selected respondents will not receive additional feedback other than a non-selected notice. Special consideration will be given to small business firms and consortia involving small business firms. Preference will be given to businesses located in the United States which agree that products embodying inventions made under the CRADA will be manufactured substantially in the United States as provided for in 15 U.S.C. 3710a(c)(4).

This RFI does not obligate VA to enter into a CRADA with any respondent. VA reserves the right to establish a CRADA based on scientific analysis and capabilities found by way of this announcement or other searches if determined to be in the best interest of the government.

Approved: November 26, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–28917 Filed 11–28–12; 8:45 am]

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Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 734, 740, 772, and 774
Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List (CCL) Clearer; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 740, 772, and 774

[Docket No. 110818512–2136–01]

RIN 0694–AF37

Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List (CCL) Clearer

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: On December 9, 2010, the Bureau of Industry and Security (BIS) published an advance notice of proposed rulemaking entitled *Commerce Control List: Revising Descriptions of Items and Foreign Availability* as part of the President's Export Control Reform (ECR) Initiative. The December 9, 2010 notice sought, among other things, public comments on how descriptions of items controlled on the Commerce Control List (CCL) could be made clearer. This proposed rule would implement changes identified by BIS and the public that would make the CCL clearer. This rule would only implement changes that can be made to the CCL without requiring changes to multilateral export control regime guidelines or lists. However, BIS has identified changes that would require a decision of a multilateral regime to implement. For those changes, the U.S. Government is developing regime change proposals for consideration by members of those multilateral export control regimes. BIS will implement those changes in separate rulemakings, if approved by the respective multilateral export control regimes.

DATES: Comments must be received by BIS no later than January 28, 2013.

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

- Federal eRulemaking Portal: *http://www.regulations.gov.* The identification number for this rulemaking is BIS–2012–0044.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF37 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF37.

The Department of Commerce's Plan for Retrospective Analysis of Existing Rules may be found at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

FOR FURTHER INFORMATION CONTACT: Timothy Mooney or Robert Monjay, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–2440, Fax: (202) 482–3355, Email: *rpd2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION

Background

On December 9, 2010 (75 FR 76664), the Bureau of Industry and Security (BIS) published an advance notice of proposed rulemaking entitled *Commerce Control List: Revising Descriptions of Items and Foreign Availability* as part of the President's Export Control Reform (ECR) Initiative. The December 9 notice sought, among other things, public comments on how descriptions of items controlled on the Commerce Control List (CCL) could be made clearer. Although these revisions originated with the ECR initiative, this proposed rule is entirely consistent in spirit and substance with Executive Order 13563, under which agencies are to conduct retrospective analyses of their regulations to identify and remedy any unnecessary compliance burden caused by rules that are unduly complex, outmoded, inconsistent, or overlapping. In Executive Order 13563, the President directed each agency to review its ''existing significant regulations, and consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' In response to this directive, Commerce released on August 23, 2011 a plan for the review of its regulations. This proposed rule was identified by the Department as part of its plan for the retrospective analysis of regulations. The Department's plan may be found at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

This proposed rule would implement changes identified by BIS and the public that would make the CCL clearer. This rule would only implement changes that can be made to the CCL without requiring a multilateral regime change. However, BIS has identified changes that would make the CCL clearer, but would require a multilateral export control regime change to implement. The U.S. Government is developing some of those changes into regime change proposals for consideration by members of those multilateral export control regimes. BIS will implement those changes in separate rulemakings, if approved by the respective multilateral export control regimes.

This proposed rule will identify new phrases or headings within double quotations. The EAR identifies terms defined in part 772 with double quotations as well. Please note that not all of the terms set forth within quotations in this proposed rule are defined in part 772. The additional double quotations around new phrases, headings, or commonly used words, are used in the Background section of this proposed rule to assist in the readability of the text.

This proposed rule includes changes described under four headings:

(1) Clarifications to existing CCL controls, including the use of the terms ''parts'' and ''components'' on the CCL;

(2) Changes to conform the CCL to the multilateral export control regime control lists and previous amendments to the EAR;

(3) Structural changes to improve the clarity of the CCL; and

(4) Removal of fourteen ECCNs subject to the exclusive jurisdiction of the Nuclear Regulatory Commission.

(1) Clarifications to Existing CCL Controls, Including the Use of the Terms ''Parts'' and ''Components'' on the CCL

The majority of changes proposed in this rule would amend the CCL without changing the scope of the controls. However, this rule does propose changes that would affect the scope of one ECCN. Specifically, this rule proposes to remove ECCN 8A918 and add certain marine boilers to ECCN 8A992, where they would be controlled for AT and UN reasons. This change is described in more detail below under the heading ''ECCN 8A918.''

The bulk of the changes this rule would make to the CCL are non-substantive and would provide additional regulatory guidance to people classifying items subject to the EAR. One proposed change would be to clarify the scope of ECCNs by providing clearer definitions of the terms ''parts'' and ''components,'' which is discussed below. The changes BIS proposes in this rule in this section are limited to aligning with the definitions of ''part'' and ''component'' included in a proposed rule published on July 15, 2011 (76 FR 41958) entitled ''Proposed Revisions to the Export Administration Regulations (EAR): Control of Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML).'' (hereinafter ''the July 15, 2011 rule'') These proposed changes include adding

additional references to ''part'' and ''component'' where needed in certain ECCNs to clarify that the scope of those ECCNs also extends to ''parts'' and ''components'' even if previously those ECCNs may have only referenced part or component, but not referenced both part and component together. The proposed definitions of ''part'' and ''component'' are provided below, along with a discussion of the context for the need to make certain conforming changes proposed in this rule. The proposed conforming changes included in this rule would not be published in final form until the revised definitions of ''part'' and ''component'' are published in final form in a separate rule.

BIS is not attempting, with the proposed changes adding additional references to ''parts'' and ''components,'' to change the scope of what the affected ECCNs control. If, however, the public believes any such changes would change the present scope of the affected ECCNs, then the public should submit comments that identify such changes and explain how the changes would cause the ECCNs to deviate from their present scope. In addition, the public is encouraged to review the entire CCL to identify and comment on any other ECCN that uses the terms ''parts'' or ''components'' where additional changes may be warranted to conform to the intended scope of those ECCNs.

The proposed clarifying changes are as follows:

(A) *Revisions to ECCN headings to clarify meaning.*

Revision to the headings of twenty-four ECCNs. In Supplement No. 1 to part 774—The Commerce Control List, this rule would revise, to enhance clarity, the headings of the following twenty-four ECCNs: 1A995, 1B115, 2A291, 2B005, 2B109, 2B352, 2B991, 2B992, 3B991, 4A994, 5A991, 5D992, 5E992, 6A006, 6A996, 6A997, 6A998, 6B995, 6D993, 7A103, 7A107, 8A992, 9A106 and 9B991. This rule would also clarify the relationship between the headings and the ''items'' paragraph in the List of Items Controlled section of these twenty-four ECCNs. For example, in certain ECCNs, the entries include an ''items'' paragraph, but the ECCN heading does not direct people to review the ''items'' paragraph. This rule would add the phrase ''(see List of Items Controlled)'' to these ECCN headings. For other ECCNs listed above, the heading includes the phrase ''(see List of Items Controlled),'' but the placement of the phrase is not correct in terms of what BIS intended to control in the ECCN. If the phrase appears at the end of the heading, then that means the ''items'' paragraph in the List of Items Controlled section is the exclusive, complete list of the items the ECCN controls. If, however, the phrase appears in the middle of the heading, then that means only that portion of the heading prior to the phrase ''(see List of Items Controlled)'' is specifically identified in the ''items'' paragraph in the List of Items Controlled section, and that the remaining part of the heading (i.e., the rest of the heading after the phrase ''(see List of Items Controlled)'') is an exclusive, complete description.

The placement of the phrase ''(see List of Items Controlled)'' is important for ''parts'' and ''components'' referred to in ECCN headings. If ''parts'' and ''components'' references appear before the phrase, then that means the entry only controls ''parts'' and ''components'' specifically identified in the ''items'' paragraph in the List of Items Controlled section. If, however, the phrase is in the middle of the heading and the reference to ''parts'' and ''components'' appears after the phrase—such as ''and specially designed ''parts'' and ''components'' therefor''—that means the ECCN would control specially designed ''parts'' and ''components'' for any item identified in the ''items'' paragraph in the List of Items Controlled section. This rule does not address the definition of ''specially designed,'' which was proposed in a separate **Federal Register** notice on June 19, 2012 (77 FR 36409), but rather the relationship between these headings and the ''items'' paragraph in each of these respective ECCNs.

BIS is not attempting, with the proposed changes to the headings, to change the scope of what the affected ECCNs control. If, however, the public believes any such changes would alter the present scope of these ECCNs, then the public should submit comments that identify such changes and explain how the changes would cause the ECCNs to deviate from their present scope. In addition, the public is encouraged to review the entire CCL to identify and comment on any other ECCN headings that could be made clearer.

Revisions to thirteen ECCNs. In addition, this rule would add the phrase ''as follows'' to the headings of the following thirteen ECCNs: 0A981, 5D991, 5D992, 5E992, 6A992, 6A994, 6A995, 6A997, 6A998, 6B995, 6C994, 6D993 and 9B991, for consistency with the structure of other ECCNs on the CCL. The phrase ''as follows'' is used on some of the multilateral export control regime control lists, which is why the phrase is used on the CCL, including in some unilateral ECCNs to conform to the structure of the regime-based ECCNs. The multilateral export control regimes do not use the phrase ''(see List of Items Controlled),'' but this phrase is used in many of the multilateral-based ECCNs on the CCL. BIS seeks greater consistency in how CCL headings are constructed, in particular how these two phrases are used in the ECCN headings. BIS welcomes additional suggestions for how these two phrases can be used more consistently on the CCL and whether one term or another should be used instead of using these two phrases together in many ECCN entries.

ECCN 1D993. This rule would revise the heading of 1D993 to remove the term ''equipment'' for consistency with the definition of ''equipment'' proposed in the July 15, 2011 rule. This ECCN currently refers to equipment or materials, but the only ECCNs cross referenced in the heading are for controls on materials, so the term equipment is not needed in 1D993.

ECCNs 0D001, 3D980, 3E980, 4D980 and 4E980. This rule would revise the headings of ECCNs 0D001, 3D980, 3E980, 4D980 and 4E980, by removing the term ''items'' and adding the term ''commodities'' in its place. This rule would make this change because in the context of these five ECCN headings, the term ''commodities'' is more accurate and specific regarding the scope of these entries.

ECCN 2B998. The heading of 2B998 uses the undefined term ''units.'' To add greater specificity regarding what the term ''unit'' is intended to cover in this ECCN, this rule proposes to modify the heading by removing the term ''units'' and adding the term ''circuit boards.'' This change would clarify that ''circuit boards'' are the items covered under the heading of 2B998.

ECCNs 3A980 and 3A981. This rule would add the term ''therefor'' immediately before the term ''n.e.s.'' to the headings of ECCNs 3A980 and 3A981. This rule would make this change to emphasize that these ECCNs refer only to components of the subject voice print equipment and polygraph equipment.

ECCNs 5A001 and 5A991. This rule would correct the spelling of the word ''antennae'' in the ''unit'' paragraph of 5A001 and the ''items'' paragraph (f) of 5A991. This word should be spelled as ''antennas'' to reflect the intended meaning in these two ECCNs.

ECCN 6C992. This rule would correct a grammatical error in 6C992 by removing the word ''which'' and adding in its place the word ''that.''

ECCN 9B002. This rule would correct a capitalization error in the heading of 9B002 by making the uppercase ''S'' in the phrase (See List of Items Controlled)

lower case. This rule would make this change for consistency with other references to this phrase on the CCL.

(B) *Clarifying the use of the terms ''parts'' and ''components'' on the CCL.*

The July 15, 2011 rule included proposed definitions for the terms ''parts'' and ''components.'' The July 15, 2011 rule proposed defining ''parts'' as ''any single unassembled element of a component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. Examples include threaded fasteners (e.g., screws, bolts, nuts, nut plates, studs, inserts), other fasteners (e.g., clips, rivets, pins), common hardware (e.g., washers, spacers, insulators, grommets, bushings), springs and wire.''

The July 15, 2011 rule proposed defining ''components'' as an item that is useful only when used in conjunction with an ''end item.'' Components are also commonly referred to as assemblies. For purposes of this definition, an assembly and a component are the same. There are two types of ''components'': ''Major components'' and ''minor components.'' A ''major component'' includes any assembled element which forms a portion of an ''end item'' without which the end item is inoperable. For example, for an automobile, components include the engine, transmission, and battery. If you do not have all those items, the automobile will not function, or function as effectively. A ''minor component'' includes any assembled element of a ''major component.'' ''Components'' consist of ''parts.''' References in the CCL to ''components'' include both ''major components'' and ''minor components.''

Another example for applying the definition of ''components'' in the automobile context would be a fuel pump and the engine. Under this additional example, the fuel pump is a minor component of an automobile, as it is an assembled element of a ''major component,'' the engine. While the car will not function without the fuel pump, it is not a ''major component'' because it is integrated into a ''major component,'' the engine.

The July 15, 2011 rule indicated BIS would review the use of these two terms on the CCL and would likely make clarifications to CCL entries to conform to the proposed definitions included in the July 15, 2011 rule under a separate rulemaking. This proposed rule addresses the use of the terms ''parts'' and ''components'' on the CCL to ensure these terms would be used in a manner consistent with the proposed definitions included in the July 15, 2011 rule.

The terms ''parts'' and ''components'' have sometimes been used interchangeably in various ECCNs. The proposed definitions included in the July 15, 2011 rule were developed to provide clear, distinct definitions for each of these terms and other terms such as ''end item,'' ''system,'' and ''accessories and attachments,'' to align with the definitions of these terms in the International Traffic in Arms Regulations (ITAR). See 22 CFR § 121.8. Such distinctions are significant for purposes of determining whether an ECCN applies to an item to be exported.

Under the July 15, 2011, construct for the definitions of ''parts'' and ''components,'' if an ECCN does not include a control on ''parts'' or ''components,'' then that ECCN would not, by definition, apply to the export of any particular ''parts'' or ''components'' meeting the respective definitions. However, as referenced above, the terms ''parts'' and components'' have sometimes been used interchangeably, so to ensure that once these definitions of ''parts'' and ''components'' are added to the EAR that the scope of existing controls are not narrowed, this rule proposes to add in additional references to ''part'' or ''component,'' in particular for ECCNs that are based on the multilateral export control regime control lists. Under the current EAR many of these ECCNs based on the multilateral control lists only list ''components,'' but not ''parts.'' However, the U.S. Government and other multilateral regime members have interpreted these ECCNs as also including ''parts.'' BIS proposes in this rule to add additional references to ''parts'' in these ECCNs, so the U.S. Government can ensure that it is meeting its multilateral export control regime commitments. Over the mid- to long-term, BIS will reach out to the respective multilateral regimes and discuss whether certain ECCNs should be limited to ''components'' or ''parts'' or some other subset of ''components,'' such as major components or minor components.

Many of the unilateral-based ECCNs on the CCL reference ''parts,'' but not ''components.'' For unilateral-based ECCNs, BIS has more discretion in whether these ECCNs should control ''parts'' and ''components.'' However, for consistency with the approach proposed for the multilateral based ECCNs in this rule and to ensure the scope of the unilateral ECCNs is not changed, this rule proposes adding additional references to ''parts'' and ''components'' as needed in the unilateral ECCNs to conform to how BIS has interpreted the scope of these ECCNs in the past.

To conform to the proposed definitions of ''parts'' and ''components,'' BIS is proposing a number of changes to the CCL to incorporate the terms ''parts'' and ''components'' in specific ECCNs. The primary purpose of these ECCN changes is to conform to those proposed definitions and to ensure that no changes are made to the current U.S. Government interpretation of these ECCN entries. The public should keep in mind the overall purpose is not to change the current scope of controls, but rather to clarify the scope of these ECCNs consistent with the July 15, 2011 rule definitions and how items are currently classified under these ECCNs.

These proposed changes would revise the following one hundred fifty eight ECCNs on the CCL where the term ''parts'' or ''components'' is used, as identified and described below in more detail:

''Parts'' is used, but ''specially designed''''components'' or ''''components'' as follows'' is intended or ''specially designed'' ''parts'' and ''components'' is intended. In three ECCNs, the term ''parts'' is used, but the term ''specially designed'' ''components'' is intended. This rule would remove the term ''parts'' and replace it with the terms ''specially designed'' ''components'' in the following three ECCNs: 0A979, 3A980 and 3A981. This rule would remove the term ''part'' and replace it with the terms ''specially designed'' ''parts'' and ''components'' to the following four ECCNs: 0A982, 0A983, 0A985, 0A986. In ECCNs 0A984 and 0A987, the term ''parts'' is used, but the term ''components'' or '' ''components'' as follows'' is intended. This rule would remove the term ''parts'' and replace it with the term ''components'' or '' ''components'' as follows'' in these ECCNs.

''The hybrid ''component parts'' is used, but ''parts'' and ''components'' is intended. In certain ECCNs the hybrid undefined term ''component parts'' is used, but the intent is ''parts'' and ''components.'' This rule would change ECCN 3A201 to bring its meaning into alignment with this intent by changing ''component parts'' to ''parts'' and ''components.'' This same issue appears in some of the ''xY018'' ECCNs on the CCL, but given those ECCNs will be addressed in the ongoing USML to CCL process as those items in the ''xY018'' ECCNs are moved to the ''600 series'' ECCNs, this rule does not propose making changes to those ''xY018'' entries.

The term ''spare parts'' is used, but ''parts'' is intended. In ECCN 5A002, the term spare parts is used in the ''LVS'' (License Exception ''shipments of limited value'') paragraph, but the intent is ''parts.'' The inclusion of the non-standard, undefined term ''spare parts'' could cause confusion about the scope of the LVS authorization. This rule removes the word ''spare'' to clarify the applicability of this license exception to this ECCN.

''Parts'' or ''accessories'' is included, but is not within scope of the ECCN. In ECCNs 2B201, 2B206, 2B209, 2B290, 6A225, 6A226, 6A992, 6A994, 6A995, 6C992, 6C994, and 9A120, the terms ''parts'' and ''accessories'' are used in the ''unit'' paragraph in the List of Items Controlled section, but the ECCN does not include ''parts'' or ''accessories'' in the list of what that ECCN controls. The inclusion of references to ''parts'' or ''accessories'' in these ''unit'' paragraphs may cause confusion regarding the scope of those ECCNs. This rule would remove such references to ''parts'' and ''accessories'' in these ECCNs.

''Accessories'' is included, but is not within scope of the ECCN. In ECCNs 2A292, 6A203, 6A992 and 9A106, the terms ''parts'' and ''accessories'' are used in the ''unit'' paragraph in the List of Items Controlled section, but the ECCN does not include ''accessories'' in the list of items that the ECCN controls. The inclusion of a reference to accessories in these ''unit'' paragraphs may cause confusion regarding the scope of those ECCNs. In these same ECCNs, the term ''components'' is included in the ''unit'' paragraph, but with a different unit of measurement than ''parts.'' The references to ''parts'' and ''components'' with different units of measurement is inconsistent with the interchangeable use of these terms. This rule would remove such ''parts'' and ''accessories'' references and insert ''parts'' before the ''components'' reference in these ECCNs.

''Parts'' or ''components'' is used, and BIS intends the ECCN to mean ''parts'' and ''components.'' As the terms ''parts'' and ''components'' are currently used interchangeably in many entries, maintaining current controls while adopting definitions for these words requires the use of both words in each of the one hundred forty-eight (148) ECCNs where one of those terms is currently used and intended. This will ensure that existing ECCNs maintain the same controls as exist under the prior undefined interchangeable use of the terms parts and components that encompass all subsidiary elements of a complete system. BIS, in consultation with the other agencies and multilateral export control regimes, intends to revise these entries in the future to further refine the CCL controls.

This rule would insert ''parts'' and add quotation marks in the following 127 ECCNs and Notes:

1A001, 1A002, 1A004, 1A005, 1A006, 1A008, 1A102, 1A995, 1B001, 1B003, 1B101, 1B102, 1B115, 1B117, 1B118, 1B119, 1C007, 1C117, 1C230, 1C350, 1C355, 2A001, 2A991, 2B001, 2B003, 2B004, 2B005, 2B109, 2B116, 2B229, 2B351, 2B352, 2B992, 2B998, 2D351, 3A001, 3A003, 3A101, 3A201, 3A233, 3A292, 3A982, 3A991, 3A999, 3B001, 3B002, 3B991, 3B992, 3D982, 3D991, 3E001, 3E003, 3E982, 3E991, 4A001, 4A003, 4A004, 4A101, 4A994, 5A001, 5A991, 5B001, 5E001, 5A002, 5A992, 6A001, 6A002, 6A003, 6A004, 6A005, 6A006, 6A008, 6A102, 6A107, 6A205, 6A991, 6A992, 6A995, 6A996, 6A998, 6B008, 6B995, 6D001, 6E001, 6E002, 6E993, 7A001, 7A002, 7A003, 7A005, 7A008, 7A101, 7A102, 7A103, 7A104, 7A105, 7A107, 7D001, 7D101, 7E001, 7E002, 7E101, 8A002, 8A992, 9A002, 9A003, 9A004, 9A005, 9A006, 9A008, 9A010, 9A011, 9A012, 9A106, 9A108, 9A109, 9A111, 9A120, 9B001, 9B002, 9B003, 9B009, 9B010, 9B115, 9B116, 9D004 and 9E003.

In addition to the 127 ECCNs identified in the previous paragraph, this rule would also insert ''parts'' and add quotation marks in the Note to the Table on Deposition Techniques in the introductory portion of Category 2, Product Group E, and the introductory Notes to Category 5, Parts I and II.

This rule would insert ''components'' and add quotation marks in the following 12 ECCNs:

2A292, 2A994, 2B001, 2B201, 5A980, 6A203, 6B995, 8A992, 9A012, 9A106, 9A991 and 9B010.

This rule would reposition the term ''parts'' before ''components'' and add quotation marks to the existing terms ''parts'' and ''components'' in the following 12 ECCNs:

1A004, 1C002, 2A983, 2A984, 3A001, 4A994, 6A992, 7A994, 9A106, 9A991, 9B990 and 9E003.

(C) *Clarifying the use of the term ''assemblies'' on the CCL as components.*

In the July 15, 2011 rule, BIS proposed to define the term ''components'' to mean ''components are also commonly referred to as assemblies. For purposes of this definition, an assembly and a component are the same.'' BIS has reviewed the CCL to ensure the term ''assemblies'' is not being used redundantly on the CCL. This review has identified five ECCNs (5A991, 9A002, 9A003, 9B002 and 9D004) where the terms ''assemblies'' and ''components'' are being used in the same ECCN, but the term ''assemblies'' should be removed to avoid the incorrect interpretation that assemblies are different from components. This rule would add the term ''electronic'' before the term ''assemblies'' in 5A991 under ''items'' paragraphs (c.1) and (g) to distinguish the particular type of assembly that is intended to be controlled under this entry. With regard to ECCNs 9A002, 9A003, 9B002 and 9D004, the U.S. Government intends to develop a proposal to submit to the Wassenaar Arrangement that would propose the removal of the term ''assemblies'' from these ECCNs or propose adding more descriptive terms, such as ''electronic'' to clarify the scope of those other multilateral-based ECCNs.

This rule would remove reference to the term ''assemblies'' in ECCN 6A998, and add the term ''components'' in its place. As described above, this rule also proposes adding the term ''parts'' to 6A998.

(D) *This rule would also revise the following ECCNs:*

ECCN 1C996. This rule would amend 1C996 by revising the heading to add the phrase ''not controlled by 1C006,'' to clarify the scope of 1C996 as it relates to 1C006.

ECCN 2B350. This rule would amend 2B350 by revising the ''Related Definitions'' paragraph in the List of Items Controlled section to indicate for purposes of this entry that the term 'chemical warfare agents' includes those agents ''subject to the ITAR'' (see 22 CFR parts 120 through 130). In addition, this rule would add a note at the end of the ''items'' paragraph in the List of Items Controlled section to provide a reminder and cross reference to the Note for exporters, reexporters and transferors, stating the following: ''See Categories V and XIV of the United States Munitions List for all chemicals that are '''subject to the ITAR' (see 22 CFR parts 120 through 130).''

ECCN 2B996. This rule would amend 2B996 by revising the heading to clarify that dimensional inspection or measuring systems or equipment not controlled by 2B006 or 2B206 are controlled under this ECCN. Certain dimensional inspection or measuring systems or equipment controlled under 2B206 would also be controlled under 2B996. To clarify the relationship between 2B996 and 2B206, this rule would add 2B206 to the exclusion from 2B996.

ECCN 6A002. This rule would revise the STA (License Exception ''Strategic Trade Authorization'') paragraph in the

License Exceptions section, which as proposed in this rule would now be in its own section called Special Conditions for License Exception STA. This rule would remove the phrase, ''to any of the eight destinations listed in § 740.20(c)(2) of the EAR'' from the end of the current STA paragraph and would add it to the introductory text of the STA paragraph. BIS makes this change to clarify the 6A002 ''items'' paragraphs that are not eligible for License Exception STA to any of the eight destinations listed in § 740.20(c)(2).

ECCN 8A918. This rule would remove the marine boilers from 8A918 and would move these items to two new ''items'' paragraphs that would be added in the List of Items Controlled section of 8A992. This rule would add a new ''items'' paragraph (l) to 8A992 for marine boilers designed to have any of the characteristics in the new 8A992.l.1 or .l.2. This rule would add ''items'' paragraph (m) to 8A992 for components, parts, accessories, and attachments for marine boilers that would be described in 8A992.l. This rule's proposed movement of these commodities from 8A918 to 8A992.l and .m would remove the Regional Stability (RS) Column 2 control on these commodities. The Anti-Terrorism (AT) and United Nations (UN) controls would be retained for the commodities moved to 8A992.l and .m. BIS proposes this change because these marine boilers do not warrant an RS control or a separate ECCN entry and can therefore be added under ECCN 8A992 to be controlled with other types of marine commodities warranting an AT control.

ECCN 9A980. This rule would revise 9A980 by removing the term ''parts'' from the heading of the ECCN and adding a new heading note to clarify the scope of the ECCN. The Crime Control (CC) parts that would have been classified under this entry if exported alone are already accounted for on the CCL and controlled for CC reasons. The new heading note that this rule would add clarifies that in order for a vehicle to be classified as a nonmilitary mobile crime scene laboratory under ECCN 9A980, the vehicle must contain one or more analytical or laboratory items controlled for Crime Control (CC) reasons on the CCL, such as items controlled under ECCNs 3A980 and 3A981. This new heading note does not change the scope of the ECCN, but would make the scope of this ECCN and the relationship to other CC ECCNs on the CCL clearer.

(E) *Addition of ''Related Controls'' to aid in classification.*

Most ECCNs on the CCL contain a ''related controls'' paragraph in the List of Items Controlled section. The ''related controls'' paragraph provides cross references to related ECCNs to assist the public in classifying items that are subject to the EAR. In some ECCNs, the ''related controls'' paragraph also includes cross-references to the export controls other U.S. Government agencies administer.

This rule proposes adding a number of additional ''related controls'' paragraphs or revising existing ''related controls'' paragraph to assist the public in classifying items. In responding to this proposed rule, the public may also provide suggestions for additional ''related controls'' that would assist the public in classifying items. This rule proposes revising the ''related controls'' paragraphs in the following twelve ECCNs: 1A985, 1B117, 1B118, 1B119, 1B225, 1C117, 1C233, 2B105, 2B116, 3A230, 7A103 and 9B009.

Lastly, this rule would revise the ''related controls'' paragraphs in ECCN 7A005 and 7A994 and include the substance of the amended related control paragraph as a new ''license requirement note'' in 7A994. This rule change would clarify the relationship between 7A005 and 7A994 and provide guidance on the appropriate classification for GPS equipment. The added text in 7A005 and 7A994 would alert persons classifying GPS items that ''typically commercially available GPS do not employ encryption or adaptive antenna and are classified as 7A994.''

(F) *Addition of the term ''subject to the ITAR'' to the EAR.*

This rule would add the term ''subject to the ITAR'' to § 772.1 (Definitions of terms as used in the Export Administration Regulations (EAR)). This defined term would be added to parallel the use of the term ''subject to the EAR'' that is commonly used in the EAR, along with simplifying many of the references to the export jurisdiction of the Department of State that are included in the EAR. The vast majority of these references to the export control jurisdiction of the Department of State are on the CCL. This rule would also add the following definition of ''subject to the ITAR'' in § 772.1:

A term used in the EAR to describe those commodities, software, technology (e.g., technical data) and defense services over which the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) exercises regulatory jurisdiction under the International Traffic in Arms Regulations (ITAR) (see 22 CFR 120–130).

This rule would make conforming changes to the rest of the EAR, including several ECCNs and §§ 734.4 (*De minimis* U.S. content), 734.6 (Assistance available from BIS for determining licensing and other requirements), and 740.6 (Technology and software under restriction (TSR)), by adding ''subject to the ITAR'' where the export control jurisdiction of the Department of State is referenced. In addition to making the conforming change in § 734.6, this rule would revise the language that refers to the ITAR to clarify that in order to determine whether an item is ''subject to the ITAR,'' you should review the ITAR's United States Munitions List (see 22 CFR §§ 120.6 and 121.1). The revised text would also clarify you may also submit a request to the Department of State, Directorate of Defense Trade Controls, for a formal jurisdictional determination regarding the commodity, software, technology, or activity at issue (see 22 CFR § 120.4).

(2) Changes to Conform the CCL to the Multilateral Export Control Regime Control Lists and Previous Amendments to the EAR

This rule also proposes making the following changes to conform the CCL to the multilateral export control regime control lists and to conform the CCL to the intent of past amendments to the EAR. These are cases where a previous amendment to the EAR was intended to effect a change, but the change was not implemented as intended or where a conforming change should have been made to the CCL, but was inadvertently not made in a past rulemaking. This rule proposes to make the following conforming changes:

(A) *Conforming changes for TSR limitations of Wassenaar Very Sensitive List Items.*

In implementing its commitment to exercise vigilance for the licensing of items listed on the Wassenaar Very Sensitive List, the United States has limited the use of License Exception TSR to a list of specifically identified countries for certain ECCNs. These limitations are contained in the TSR paragraph in the License Exception section of nine ECCNs (i.e., ECCNs 1E001, 5D001, 5E001, 6D001, 6D003, 6E001, 6E002, 8D001 and 8E001) that contain items on the Wassenaar Very Sensitive List and for which TSR has been authorized for some, or all of the ECCN.

The TSR paragraph limitation was introduced in 1998, upon implementation of the Wassenaar Arrangement (63 FR 2452), with a list of sixteen destinations eligible for TSR for Wassenaar Very Sensitive List items. Approximately one-year later Japan was added to the TSR paragraph limitation (64 FR 10852). In 2008, Australia and Norway were added to the TSR

paragraph in ECCN 1E001, with the explanation that their original exclusion had been an oversight. Australia and Norway were not added to the other TSR paragraphs with Wassenaar Very Sensitive List limitations, creating an inconsistency.

This rule proposes to adopt a standardized list of countries under the EAR for the nine ECCNs. The use of this standardized list of countries would simplify the use of the TSR License Exception for these nine ECCNs and aid the public's understanding regarding what countries are eligible and not eligible to receive National Security (NS) controlled technology under these nine ECCNs. BIS has recently determined that the thirty six (36) countries listed in License Exception Strategic Trade Authorization, Section 740.20(c)(2) of the EAR, are eligible for License Exception authorization for Wassenaar Very Sensitive List items. These 36 countries are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, or the United Kingdom. This rule proposes to revise the list of countries in the TSR paragraph for these nine ECCNs to state ''those 36 countries listed in § 740.20(c)(1) (License Exception STA).'' The 17 countries (19 countries in 1E001) that were previously identified as being eligible for License Exception TSR under these ECCNs were a subset of the 36 STA-eligible countries. Therefore, this proposed rule would add the remaining 19 countries, except for 1E001 where this proposed rule would add the remaining 17 countries, as eligible countries to receive this type of technology through application of License Exception TSR under these ECCNs.

(B) *ECCN changes to conform to the multilateral export control regimes.*

ECCNs 1A101. This rule would amend 1A101 by replacing the defined term ''missiles'' with the phrase ''rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km'' to conform to the Missile Technology Control Regime (MTCR) Annex.

ECCNs 1D103. This rule would amend 1D103 by replacing the defined term ''missiles'' with the phrase ''rockets, missiles, or unmanned aerial vehicles capable of delivering at least a 500 kg payload to a ''range'' equal to or greater than 300 km'' to conform to the MTCR Annex.

ECCN 5D101. This rule would amend 5D101 by removing the term ''items'' and adding the term ''equipment'' in its place. This rule would make this change to be consistent with the MTCR Annex.

ECCN 6A203. This rule would amend 6A203 by removing ''accessories in $ value'' from the ''unit'' paragraph in the List of Items Controlled section. This change would be made to conform to the Nuclear Suppliers Group (NSG) control list, which does not include controls on ''accessories'' under NSG 1.A.2, 5.B.3, and 5.B.4.

ECCN 6D102. This rule would amend 6D102 by removing the term ''goods'' from the heading and adding the term ''equipment'' in its place. This rule would make this change to be consistent with the MTCR Annex.

ECCN 6D994. This rule would remove 6D994 to conform to a previous amendment to the EAR that imposed a control for these same items under 6D003.c. BIS's intention when 6D994 was added to the CCL was to impose a control on this software until such time as a control could be approved at the Wassenaar Arrangement and implemented in the EAR. At the time when the final rule to add this software to 6D003.c was published, the intention was to remove 6D994. However, this entry was inadvertently retained at the time 6D003.c was added to the CCL, which may have caused confusion for exporters trying to classify this type of software because the software meets the description of two software ECCNs. To address this scenario, this rule would remove 6D994 from the CCL, leaving 6D003.c as the control ECCN.

ECCN 7D101. This rule would amend 7D101 by revising the heading to include 7A117 in the list of ECCNs for which 7D101 controls the software. 7A117 is a reference to a USML control based on the MTCR Annex. 7D101 controls the software of certain commodities controlled for MT reasons. This change is made to conform to the MTCR Annex.

ECCN 7E104. This rule would amend 7E104 by replacing the defined term ''missiles'' with the phrase ''rockets or missiles capable of achieving a ''range'' equal to or greater than 300km'' to conform to the MTCR Annex.

ECCN 9A107. This rule would amend 9A107 by revising the heading to replace the word ''engines'' with the word ''motors.'' This change is made to conform to the MTCR Annex.

ECCN 9A110. This rule would amend 9A110 by revising the heading to include 9A109 in the list of ECCNs for which 9A110 controls the composite structures, laminates and manufactures thereof. 9A109 is a reference to a USML control based on the MTCR Annex. 9A110 controls the software of certain commodities controlled for MT reasons. This rule would further amend 9A110 by replacing the defined term ''missiles'' with the phrase ''rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km.'' These changes are made to conform to the MTCR Annex.

ECCN 9A118. This rule would amend 9A118 by inserting the phrase ''missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal with a range capability of 300 Km or greater'' into the heading to conform to the MTCR Annex.

ECCN 9B115. This rule would amend 9B115 by revising the heading to include 9A103 in the list of ECCNs for which 9B115 controls the ''production equipment.'' 9A103 is a reference to a USML control based on the MTCR Annex. 9B115 controls the ''production equipment'' of certain commodities controlled for MT reasons. This change is made to conform to the MTCR Annex.

ECCN 9B116. This rule would amend 9B116 by revising the heading to include 9A103 in the list of ECCNs for which 9B116 controls the ''production equipment.'' 9A103 is a reference to a USML control based on the MTCR Annex. 9B116 controls the ''production equipment'' of certain commodities controlled for MT reasons. This change is made to conform to the MTCR Annex.

ECCN 9D103. This rule would amend 9D103 by revising the heading to include ECCNs 9A009, 9A107 and 9A109, and to expand the reference to 9A105 from 9A105.a to the entire ECCN in the list of ECCNs for which 9D103 controls certain ''software.'' ECCNs 9A009, 9A105, 9A107 and 9A109 are references to USML controls based on the MTCR Annex. 9D103 is a reference to USML control based on the MTCR Annex. This change is made to conform to the MTCR Annex.

ECCN 9D104. This rule would amend 9D104 by revising the heading to include all of ECCNs 9A006, 9A007, 9A008, 9A009, 9A010, 9A115 and 9A116 and 9A106.e in the list of ECCNs for which 9D104 controls the ''software.'' 9A006, 9A007, 9A008, 9A009, 9A010, 9A115 and 9A116 are references to USML controls based on the MTCR Annex. 9A106.e is controlled on the CCL for MT reasons. 9D104 controls the ''software'' of certain commodities controlled for MT reasons. This change is made to conform to the MTCR Annex.

ECCN 9D105. This rule would amend 9D105 by replacing the defined term

''missiles'' with the phrase ''rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km'' to conform to the MTCR Annex.

(3) Structural Changes To Improve the Clarity of the CCL

ECCNs on the CCL follow the same basic paragraph structure, although not all ECCNs contain the same paragraphs. The common paragraph structure is intended to allow the public to quickly review ECCNs and to identify relevant paragraphs in each ECCN. This rule proposes changes to the standard section headings that are used in most ECCNs on the CCL. These proposed changes would affect most of the ECCNs on the CCL, but would be implemented through instructions instead of setting out each proposed revision in the regulatory text. BIS is proposing the changes in the format to save on the cost of implementing these structural changes. BIS's decision also took into account that the proposed changes are not ECCN specific and are more focused on how the ECCN information is being communicated to the public. Each of the proposed structural changes this rule would implement improves the clarity of the CCL and is further described below.

(A) *Revision of License Exceptions section heading.*

This rule would revise the License Exceptions section heading to add greater specificity. This rule would revise the section heading by changing it from ''License Exceptions'' to the more specific section heading of ''List-Based License Exceptions (See Part 740 for a complete listing of license exceptions and requirements).'' This rule would also add a parenthetical after the revised section heading to provide a cross reference to the license exceptions part of the EAR. This rule would add this cross reference because a definitive determination regarding whether a license exception may be used for a specific ECCN can only be made after also reviewing the applicable license exceptions provisions in part 740 of the EAR.

(B) *Removal of the License Exception STA paragraphs.*

In order to implement the changes described above under (A) Revision of License Exceptions section heading, this rule also proposes removing the License Exception STA paragraph in the License Exceptions section of the following forty-nine ECCNs: 1A002, 1C001, 1C007, 1C010, 1C012, 1D002, 1E001, 1E002, 2D001, 2E001, 2E002, 3A002, 3B001, 3D001, 3E001, 4A001, 4D001, 4E001, 5A001, 5B001, 5D001, 5E001, 6A001, 6A002, 6A003, 6A004, 6A006, 6A008, 6B008, 6D001, 6D003, 6E001, 6E002, 7D003, 7E001, 7E002, 8A001, 8A002, 8D001, 8D002, 8E001, 8E002, 9B001, 9D001, 9D002, 9D004, 9E001, 9E002 and 9E003. This rule would move the text of those License Exception STA paragraphs to a new section titled ''Special Conditions for STA.'' This rule proposes creating this new section immediately following the proposed ''List-Based License Exceptions (See Part 740 for a complete listing of license exceptions and requirements)'' instruction, because the License Exception STA paragraphs do not perform the same function as the other list-based license exception paragraphs. This rule does not propose any changes to the regulatory text included in the current License Exception STA paragraphs of these ECCNs. The changes proposed in this rule are limited to proposing a new section heading and then moving the existing License Exception STA paragraphs in these forty-nine ECCNs to the new STA section heading.

(C) *Adding a cross-reference after Country Chart.*

This rule proposes revising the ''Country Chart'' paragraph heading in the License Requirements section to add a parenthetical to indicate where the public can find the Country Chart. The revised Country Chart paragraph heading would now read ''Country Chart (See Supp. No. 1 to part 738).'' Not all ECCNs include a Country Chart paragraph and a small number of ECCNs do not rely on the Commerce Country Chart for determining destination-based license requirements. Most ECCNs, however, are structured to refer to the information contained in the Country Chart paragraph in Supplement No. 1 to part 738 to identify destination-based license requirements. The changes in this rule would clarify that for the ECCNs that use this structure, exporters, reexporters and transferors need to refer to the Country Chart in Supplement No. 1 to part 738 to determine destination-based license requirements. For experienced exporters, reexporters, and transferors, this structure is well understood. The new cross references would be primarily intended for those exporters, reexporters, and transferors who are new to the EAR and who may not as readily understand the relationship between this standard ECCN paragraph and Supplement No. 1 to part 738. The new parenthetical phrase at the end of the Country Chart paragraph would make the relationship explicit.

(D) *Adding a new ''Reporting Requirements'' section to certain ECCNs.*

Some ECCNs include references to reporting requirements. They are typically found either in License Requirement notes or in notes to the ''items'' paragraphs in the List of Items Controlled section. BIS has adopted a standardized paragraph structure for ECCNs, as much as possible, to assist the public in classifying items. A standardized paragraph structure helps the public classify items by putting the information contained in an ECCN into a useable and easily recognizable format. The current reporting requirements, which are found in various sections and paragraphs of the ECCN, deviate from this type of standardized structure. This rule proposes to add a new section heading called Reporting Requirements where the existing reporting requirements found in ECCNs would be consolidated to address this issue. This rule does not propose any changes to the scope of current reporting requirements. This proposed standardized structure would aid in compliance with the reporting requirements and assist exporters in more quickly and easily identifying ECCNs subject to reporting requirements. The rule proposes adding the new Reporting Requirements section heading immediately before the License Exceptions section, which, as proposed above, would now be revised to read ''List-Based License Exceptions (See Part 740 for a complete listing of license exceptions and requirements).''

To implement this change in Supplement No. 1 to part 774 (the Commerce Control List), this rule would remove the ''License Requirements Notes'' paragraphs in the License Requirements section in the following thirty-nine Export Control Classification Numbers (ECCNs): 1A002, 1C007, 1C010, 1D002, 1E001, 1E002, 2D001, 2E001, 2E002, 3A002, 3D001, 3E001, 4A001, 4E001, 5A001, 5B001, 5D001, 5E001, 6A001, 6A002, 6A004, 6A006, 6A008, 6D001, 6D003, 6E001, 6E002, 8A001, 8A002, 8D001, 8D002, 8E001, 8E002, 9B001, 9D001, 9D002, 9E001, 9E002 and 9E003. In these thirty-nine ECCNs, this rule would add the new section entitled ''REPORTING REQUIREMENTS See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations'' after the License Requirements section in each of these respective ECCNs. This proposed rule would also make changes to the new Reporting Requirements section to ensure the text conforms to the listing

of authorizations in § 743.1 that require reporting to BIS.

(4) Removal of Fourteen ECCNs Subject to the Exclusive Jurisdiction of the Nuclear Regulatory Commission

(A) *Removal of fourteen ECCNs.* The CCL includes forty-nine ECCNs that refer to items that are subject to the exclusive jurisdiction of the Department of Energy, the Nuclear Regulatory Commission, or the Department of State. They constitute approximately 10% of the total number of ECCNs on the CCL. Of the forty-nine ECCNs, fourteen ECCNs are subject to the export licensing authority of the Nuclear Regulatory Commission at 10 CFR part 110. This rule proposes removing these fourteen ECCNs from the CCL. The fourteen ECCNs are 0A001, 0B001, 0B002, 0B003, 0B004, 0B005, 0B006, 0C001, 0C002, 0C004, 0C005, 0C006, 0C201 and 1C012. The ECCNs that BIS proposes to remove are Nuclear Trigger List items, so the jurisdiction of these items is already established under U.S. export controls and, as explained below, there is no need to include this additional cross reference from the CCL to the controls maintained by the Nuclear Regulatory Commission.

BIS's original purpose for including these ECCNs on the CCL was to supplement § 734.3 (Items subject to the EAR) under paragraph (b)(1), which describes items that are not subject to the EAR because they are subject to the exclusive jurisdiction of another agency of the U.S. Government, and to supplement the jurisdiction information for the other U.S. Government agencies found in Supplement No. 3 to part 730 (Other U.S. Government Departments and Agencies with Export Control Responsibilities). BIS also included these ECCNs to better align the CCL with the European Union's control lists that are primarily based on the multilateral export control regimes. However, by including references to other agencies' controls in specific ECCNs there is the potential that such ECCN references will become out of date if the other agencies update their respective regulations and the corresponding changes are not made in the EAR cross reference in a timely manner.

For example, on September 7, 2011 (76 FR 55278), the National Nuclear Security Administration, Department of Energy (DOE) published a notice of proposed rulemaking that proposed various amendments to regulations concerning unclassified assistance to foreign atomic energy activities. These proposed revisions were intended to reduce uncertainties for industry users concerning which foreign nuclear related activities by U.S. persons are ''generally authorized'' under the regulation and which activities require a ''specific authorization'' from the Secretary of Energy. However, if the ECCNs on the CCL that currently refer to DOE and NRC controls are not updated, the uncertainties for exporters, reexporters and transferors would increase because of inconsistencies in the different regulations. Given that the DOE and NRC respective regulations are controlling in this area and these ECCNs are only acting as a cross reference, BIS is proposing the removal of these ECCNs.

BIS has determined there still is utility in including general cross references to other agencies' controls. Thus, this rule proposes to include a general cross reference at the beginning of the CCL in a revised § 774.1 (Introduction) that would contain those ECCNs that have been reserved and are subject to the exclusive jurisdiction of another agency of the U.S. Government. In addition, the related control paragraphs of ECCNs would contain cross references to controls of other agencies to the extent that such controls are similar to or related to the controls of certain ECCNs.

The remaining thirty-five of the forty-nine ECCNs refer to items that are ''subject to the ITAR,'' which is maintained by the Department of State. Given the ongoing review of the United States Munitions List (USML) that is being conducted under the ECR Initiative, it is premature to propose removing or revising these thirty-five ECCNs. In addition, given the number of cross references, in particular in Categories 7 and 9 of the CCL, to these thirty-five ECCNs, BIS determined that removing the ECCNs that are ''subject to the ITAR'' should be addressed at a later time once the review of the USML is completed.

(B) *Changes to the CCL to conform to the removal of these fourteen ECCNs.* In addition to removing the fourteen ECCNs, this rule would also make conforming changes to eleven ECCNs that would be retained on the CCL. The ECCNs that would be revised by this rule contain references to one or more of the fourteen ECCNs that would be removed.

The removal of the fourteen ECCNs should not impact the existing controls for items subject to the EAR. However, given the interrelationship between the fourteen ECCNs removed and the eleven ECCNs where conforming changes would be required, BIS is particularly interested in any comments regarding whether the proposed changes accurately capture the intent of the previous references (i.e., the references to the fourteen ECCNs that would be removed in the eleven ECCNs that are retained on the CCL).

The rule would make conforming changes to the following eleven ECCNs: 1A290, 1C107, 1C240, 1C298, 3A225, 3A226, 3A227, 3A233, 3A999, 6A005 and 6A205. This rule's proposed revisions consist of the following:

ECCNs 3A225, 3A226, 3A227, 3A233, 6A005 and 6A205. This rule would revise six ECCN headings (3A225, 3A226, 3A227, 3A233, 6A005 and 6A205). This rule would take this approach to minimize the number of changes that would need to be made, while still ensuring the headings would reflect the intended scope of these six ECCNs.

On the CCL, these six ECCN headings include references to some of the fourteen ECCNs that would be removed as a shorthand way of communicating the scope of items controlled. Therefore, the removal of these fourteen ECCNs would require that a broader description be added to the headings of the ECCNs that would be retained. If only one of the fourteen ECCNs that would be removed is referenced, then BIS believes that in most cases it is easy to incorporate the text of the removed ECCN into the heading of the ECCN that would be retained. However, there are certain ECCNs that contain multiple references to the ECCNs that would be removed. In the cases where multiple ECCNs are referenced, an effort to insert all the text into the headings as a conforming change would not be feasible. To address this issue, this rule would add heading notes, which would provide more space to describe the substance of the ECCNs that would be removed from the respective headings. The end of the revised headings would include a reference to the heading notes to alert persons classifying their items to review the heading notes as they determine whether their item in question was classified under the removed ECCN.

ECCNs 1A290, 1C107 and 1E001. This rule would revise three ''related controls'' paragraphs in ECCNs 1A290, 1C107 and 1E001. These changes would revise references to one or more of the fourteen removed ECCNs in each of the three remaining ECCNs and replace them with more descriptive explanations in the related controls. These changes would reduce the need for cross-referencing in the CCL to the fourteen removed ECCNs. Another alternative would be to take the opposite approach and instead simply use very broad descriptors for the types

of items that are subject to the exclusive jurisdiction of another export control agency of the U.S. Government. BIS would welcome comments from the public regarding whether this alternative approach of simply using broad descriptors or some other approach not yet considered by BIS would be better than what is proposed.

ECCN 1E001. This rule would also revise 1E001 by removing the reference to 1C012 in the License Exception STA paragraph in the License Exceptions section. This ECCN is subject to the exclusive jurisdiction of another agency. Thus, License Exception STA could never be used as the authority to export an item described in 1C012.

ECCN 1C298. This rule would revise one CCL note in ECCN 1C298 to remove references to one or more of the fourteen ECCNs that would be removed by this rule.

(C) *Adding a general cross reference to the fourteen ECCNs that would be removed.*

In § 774.1 (Introduction), this rule would redesignate the introductory text of the section as paragraph (a) with the heading ''Scope of the control list,'' and would add a paragraph (b) with the heading ''ECCN cross-references for items subject to the exclusive jurisdiction of another agency.'' The introductory text of paragraph (b) would indicate that prior to the date of publication in the **Federal Register** of the final rule that would remove these fourteen ECCNs, the CCL contained fourteen ECCNs that were included as cross references on the CCL to the export control regulations administered by the Nuclear Regulatory Commission. Paragraph (b) would identify ECCNs formerly listed on the CCL that were subject to the jurisdiction of the Nuclear Regulatory Commission at 10 CFR part 110. This rule would add a note to paragraph (b) to indicate that ECCNs 0D001 and 0E001 (ECCNs that are proposed to be retained on the CCL) were subject to the jurisdiction of the Nuclear Regulatory Commission at 10 CFR part 110 or jurisdiction of the Department of the Energy at 10 CFR part 810, but also have certain portions that, as of the date of publication of this rule, were ''subject to the ITAR.'' These ECCNs would be retained on the CCL as a cross reference.

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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to nor 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 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 expected to decrease slightly as a result of this rule because of the proposed removal of ECCN 8A918. 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 under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be impacted by this rule, it does acknowledge that this rule will impact some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform (ECR) Initiative. As part of the ECR Initiative, BIS published an advance notice of proposed rulemaking on December 9, 2010 seeking, among other things, public comments on how descriptions of items controlled on the CCL could be made clearer. The December 9, 2010 notice solicited public suggestions on ways to improve the descriptions of items on the CCL to better reflect internationally accepted standards and use industry standard terms and references. Where objective criteria are missing from ECCNs, BIS sought specific suggestions on what technical parameters, characteristics, thresholds, and capabilities should be used to describe the item. BIS requested that all suggestions in this area should include proposed revisions to the text of ECCNs or proposed Technical Notes to ECCNs that explain terms or phrases used in the ECCN.

Fifty public comments were received totaling over 1400 pages in suggestions for how the CCL could be improved. The vast majority of suggested changes that can be implemented unilaterally by the U.S. Government involve improvements to the clarity of the CCL. These changes are included in this proposed rule. BIS also solicited in the December 9, 2010 notice comments on how the CCL could be made more

''positive,'' but given the CCL is already primarily a ''positive'' control list, most of the comments in this area focused on ways to improve the overall use of the CCL and public understanding of the CCL.

This rule focuses on implementing a large number of changes that would make the CCL clearer. The significance of any particular change, when taken by itself, may not appear to make a dramatic improvement to the clarity of the CCL, but the cumulative impact of these various proposed changes would make a significant improvement to the CCL. BIS believes this improved clarity would also make the control list easier to use, in particular for those reviewing the CCL for the first time.

Improving the clarity of the CCL as described in this rule would reduce the burden on small entities (and other entities as well) by increasing the public's confidence in self-classifying items on the CCL thereby reducing the amount of time it takes for the public to classify items using the CCL. The CCL, as noted in the December 9, 2010 notice, should be written in a clear way that allows someone who knows the technical parameters and capabilities of an item to review the CCL, even if it is their first time reviewing the CCL, and consistently and easily come to the right classification determination.

Defining and using terms consistently, clarifying control parameters to better reflect the intent of the controls, removing references on the CCL that do not serve a clear purpose, and ensuring that the controls are consistent with U.S. Government commitments to the multilateral export control regimes, would make the CCL clearer and improve the ease of use of the CCL. This would reduce the burden on small entities (and all other entities as well). Ambiguity on the CCL creates a burden for small entities (and all other entities as well), so changes that make the CCL clearer would result in less burden on these entities.

One of the comments submitted in response to the December 9, 2010 notice indicated that the overall consistency of how the CCL is structured was an area where the CCL could be improved. The current CCL does have many common structural elements, such as the ECCNs, Product Groups (A–E) and Categories (0–9) following the same basic structure, but in reviewing this comment and other public comments, BIS determined that additional changes could be made to create greater consistency in how the ECCN information was being communicated to the public, such as creating a new ''Reporting Requirements'' paragraph to make it easier for exporters classifying items to quickly determine whether a particular item was subject to reporting requirements. Other structural changes, such as the proposed changes to the License Exceptions section of the ECCNs would assist the public in more easily understanding the relationship between the License Exceptions section in ECCNs and part 740. These structural changes will reduce the burden for small entities (and all other entities as well) by making the CCL easier to use and more clearly communicating the relationship between the CCL and other key provisions of the EAR, such as parts 738 and 740.

In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items. Without this rule, a company or person may have submitted a classification to BIS because the CCL was not clear from their perspective regarding the scope of items controlled. BIS supports and encourages the public to submit classification requests when a person is unsure of an item's classification, but the CCL should be written in a clear fashion whereby a person who understands the technical parameters and capabilities of their item does not feel a need to submit a classification request in order to classify an item subject to the EAR. In addition, for small entities (and all other entities), if the CCL is clear and easy to use, a company or person may find it easier and less expensive to train others to use the CCL. If there is perceived ambiguity on the CCL that requires some degree of interpretation to understand what is controlled, such ambiguity makes it more difficult to train an entity's personnel to use the CCL. This is not the type of control list BIS seeks. Creating control lists that clearly communicate the scope of items controlled on the CCL and the USML are one of the objectives of the ongoing ECR Initiative, as was referenced in the December 9, 2010 notice. This proposed rule is not meant to create any substantive changes. Therefore, this proposed rule would not cause any economic impact and would result in no additional compliance costs.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the improvements made to the clarity of the CCL and the reduction in time and cost required for small entities to classify their items using the CCL, along with understanding how the CCL relates to other provisions of the EAR.

For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research Science and technology.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 734, 740, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 734—[AMENDED]

1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 9, 2011, 76 FR 70319 (November 10, 2011) Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

2. Section 734.4 is amended by revising the Note to paragraph (a)(3) to read as follows:

§ 734.4 *De minimis* U.S. content.

* * * * *

Note to Paragraph (a)(3): QRS11 Micromachined Angular Rate Sensors are ''subject to the ITAR,'' (see 22 CFR parts 120 through 130) except when the QRS11–00100–100/101 version of the sensor is integrated into and included as an integral part of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates a commercial primary or standby instrument that has such a sensor integrated, or is exported solely for integration into such systems; or when the QRS11–00050–443/569 is integrated into a commercial automatic flight control system of the type described in

ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates an automatic flight control system that has such a sensor integrated, or is exported solely for integration into such a system.

* * * * *

3. Section 734.6 is amended by revising paragraph (a) to read as follows:

§ 734.6 Assistance available from BIS for determining licensing and other requirements.

(a) If you are not sure whether a commodity, software, technology, or activity ''subject to the EAR'' is subject to licensing or other requirements under the EAR, you may ask BIS for an advisory opinion or a commodity classification determination. In order to determine whether an item is ''subject to the ITAR,'' you should review the ITAR's United States Munitions List (see 22 CFR 120.6 and 121.1). You may also submit a request to the Department of State, Directorate of Defense Trade Controls, for a formal jurisdictional determination regarding the commodity, software, technology, or activity at issue (see 22 CFR 120.4).

* * * * *

PART 740—[AMENDED]

4. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

5. Section 740.6 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 740.6 Technology and software under restriction (TSR).

(a) * * *

(1) * * *

(iii) If the direct product of the technology is a complete plant or any major components of a plant, export to Country Groups D:1 or E:1 the direct product of the plant or major components thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

PART 772—[AMENDED]

6. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

7. Section 772.1 is amended by adding a definition for the term ''subject to the ITAR'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Subject to the ITAR. A term used in the EAR to describe those commodities, software, technology (e.g., technical data) and defense services over which the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) exercises regulatory jurisdiction under the International Traffic in Arms Regulations (ITAR) (see 22 CFR parts 120 through 130).

* * * * *

PART 774—[AMENDED]

8. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

9. Revise § 774.1 to read as follows:

§ 774.1 Introduction.

(a) *Scope of the control list.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL) that includes ''items''—i.e., ''commodities,'' ''software,'' and ''technology''—subject to the authority of BIS. The CCL does not include items exclusively controlled for export by another department or agency of the U.S. Government. In instances where other agencies administer controls over related items, entries in the CCL will often contain a reference to these controls. In addition, those items ''subject to the EAR'' but not identified on the CCL are identified by the designator ''EAR99.'' See § 734.2(a) of the EAR for items that are ''subject to the EAR.'' EAR Part 738 contains an explanation of the organization of the CCL and its relationship to the Country Chart.

(b) *ECCN cross-references for items subject to exclusive jurisdiction of another agency.* Prior to November 29, 2012, the CCL contained certain ECCNs that were only included as cross references to items subject to the export control regulations administered by the Nuclear Regulatory Commission.

ECCNs formerly listed on the CCL that, as of November 29, 2012 were subject to the export licensing authority of the Nuclear Regulatory Commission at 10 CFR part 110 are: 0A001, 0B001, 0B002, 0B003, 0B004, 0B005, 0B006, 0C001, 0C002, 0C004, 0C005, 0C006, 0C201 and 1C012.

Note to paragraph (b): As of November 29, 2012 ECCN 0D001 is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110), and ECCN 0E001 is subject to the export licensing authority of the Department of Energy (see 10 CFR part 810), but certain portions of these entries are also ''subject to the ITAR'' (see 22 CFR parts 120 through 130). These ECCNs are retained on the CCL as a cross reference.

(c) *Where to find the CCL?* The CCL is contained in Supplement No. 1 to this part, and Supplement No. 2 to this part contains the General Technology and Software Notes relevant to entries contained in the CCL.

Supplement No. 1 to Part 774—[Amended]

10. Supplement No. 1 to part 774 (the Commerce Control List) is amended by removing the following Export Control Classification Numbers (ECCNs): 0A001, 0B001, 0B002, 0B003, 0B004, 0B005, 0B006, 0C001, 0C002, 0C004, 0C005, 0C006, 0C201and 1C012.

11. Supplement No. 1 to part 774 (the Commerce Control List) is amended:

a. By removing the License Exception STA paragraph under the License Exceptions section of the following Export Control Classification Numbers (ECCNs): 1A002, 1C001, 1C007, 1C010, 1C012, 1D002, 1E001, 1E002, 2D001, 2E001, 2E002, 3A002, 3B001, 3D001, 3E001, 4A001, 4D001, 4E001, 5A001, 5B001, 5D001, 5E001, 6A001, 6A002, 6A003, 6A004, 6A006, 6A008, 6B008, 6D001, 6D003, 6E001, 6E002, 7D003, 7E001, 7E002, 8A001, 8A002, 8D001, 8D002, 8E001, 8E002, 9B001, 9D001, 9D002, 9D004, 9E001, 9E002, and 9E003;

b. By adding the new section heading ''Special Conditions for STA'' after the License Exceptions sections in the ECCNs identified under instruction 18.a; and

c. By adding the License Exception STA paragraphs removed from instruction 18.a to the new section heading ''Special Conditions for STA'' added under instruction 18.b.

12. Supplement No. 1 to part 774 (the Commerce Control List) is amended by removing the section headings ''License Exceptions'' from Export Control Classification Numbers (ECCNs) and replacing those headings with ''List

Based License Exceptions (See Part 740 for a complete listing of license exceptions and requirements).''

13. Supplement No. 1 to part 774 (the Commerce Control List) is amended by removing the ''Country Chart'' paragraph heading in the License Requirements section in Export Control Classification Numbers (ECCNs) and adding in its place the heading ''Country Chart (See Supp. No. 1 to part 738).''

14. Supplement No. 1 to part 774 (the Commerce Control List) is amended:

a. By removing the ''License Requirements Notes'' paragraphs in the License Requirements section in the following Export Control Classification Numbers (ECCNs): 1A002, 1C007, 1C010, 1D002, 1E001, 1E002, 2D001, 2E001, 2E002, 3A002, 3B001, 3D001, 3E001, 4A001, 4E001, 5A001, 5B001, 5D001, 5E001, 6A001, 6A002, 6A004, 6A006, 6A008, 6D001, 6D003, 6E001, 6E002, 8A001, 8A002, 8D001, 8D002, 8E001, 8E002, 9B001, 9D001, 9D002, 9E001, 9E002 and 9E003; and

b. By adding the new section ''REPORTING REQUIREMENTS See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations'' after the License Requirements section in the following Export Control Classification Numbers (ECCNs): 1A002, 1C007, 1C010, 1D002, 1E001, 1E002, 2D001, 2E001, 2E002, 3A002, 3D001, 3E001, 4A001, 4E001, 5A001, 5B001, 5D001, 5E001, 6A001, 6A002, 6A004, 6A006, 6A008, 6D001, 6D003, 6E001, 6E002, 8A001, 8A002, 8D001, 8D002, 8E001, 8E002, 9B001, 9D001, 9D002, 9E001, 9E002 and 9E003.

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A002 is amended by revising the heading to read as follows:

0A002 Power generating or propulsion equipment specially designed for use with space, marine or mobile ''nuclear reactors''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

* * * * *

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A979 is amended by revising the heading to read as follows:

0A979 Police helmets and shields; and ''specially designed'' ''components,'' n.e.s.

* * * * *

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A981 is amended by revising the heading to read as follows:

0A981 Equipment designed for the execution of human beings as follows (see List of Items Controlled).

* * * * *

18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A982 is amended by revising the heading to read as follows:

0A982 Law enforcement restraint devices, including leg irons, shackles, and handcuffs; straight jackets; stun cuffs; shock belts; shock sleeves; multipoint restraint devices such as restraint chairs; and ''specially designed'' ''parts,'' ''components'' and accessories, n.e.s.

* * * * *

19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A983 is amended by revising the heading to read as follows:

0A983 Specially designed implements of torture, including thumbscrews, thumbcuffs, fingercuffs, spiked batons, and ''specially designed'' ''parts,'' ''components'' and accessories, n.e.s.

* * * * *

20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A984 is amended:

a. By revising the first ''CC'' paragraph in the License Requirements section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

0A984 Shotguns with barrel length 18 inches (45.72 cm) or over; receivers; barrels of 18 inches (45.72 cm) or longer but not longer than 24 inches (60.96 cm); complete trigger mechanisms; magazines and magazine extension tubes; complete breech mechanisms; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use.

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * * * *	
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm), shotgun ''components'' controlled by this entry, and buckshot shotgun shells controlled by this entry, regardless of end-user	CC Column 1
* * * * *	

* * * * *

List of Items Controlled

* * * * *

Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). These items are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A985 is amended by revising the heading to read as follows:

0A985 Discharge type arms and devices to administer electric shock, for example, stun guns, shock batons, shock shields, electric cattle prods, immobilization guns and projectiles; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and ''specially designed'' ''parts'' and ''components,'' n.e.s.

* * * * *

22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A986 is amended by revising the heading to read as follows:

0A986 Shotgun shells, except buckshot shotgun shells, ''specially designed'' ''parts'' and ''components.''

* * * * *

23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0A987 is amended by revising the heading to read as follows:

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and ''components'' as follows (see list of items controlled).

* * * * *

24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities & Equipment (and Miscellaneous Items), Export Control Classification Number (ECCN) 0D001 is amended:

a. By revising the heading; and

b. By revising the second Control(s) paragraph in the License Requirements section to read as follows:

0D001 ''Software'' specially designed or modified for the ''development,'' ''production'' or ''use'' of commodities described in 0A001, 0A002, 0B (except 0B986 and 0B999), or 0C.

License Requirements

Reason for Control:
Control(s)

* * * * *

''Software'' for items described in 0A002 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A001 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph (1) in the List of Items Controlled section to read as follows:

1A001 ''Parts'' and ''components'' made from fluorinated compounds, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Items specially designed or modified for missiles or for items on the U.S. Munitions List are ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category XXI).

* * * * *

26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A002 is amended by revising the ''Related Controls'' paragraph (3) in the List of Items Controlled section to read as follows:

1A002 ''Composite'' structures or laminates, having any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) ''Composite'' structures specially designed for missile applications (including specially designed subsystems, and ''parts'' and ''components'') are controlled by ECCN 9A110.

* * * * *

27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A004 is amended:

a. By revising the heading;

b. By revising ''Related Controls'' paragraph (4);

c. By revising the introductory text of ''items'' paragraphs a and c; and

d. By revising Technical Notes ''1'' in the List of Items Controlled section to read as follows:

1A004 Protective and detection equipment and ''parts'' and ''components,'' not specially designed for military use, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (4) Chemical and biological protective and detection equipment specifically designed, developed, modified, configured, or adapted for military applications is ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category XIV(f)), as is commercial equipment that incorporates ''parts'' or ''components'' controlled under that category except for domestic preparedness devices for individual protection that integrate ''components'' and ''parts'' identified in USML Category XIV(f)(4) when such ''parts'' or ''components'' are: (1) Integral to the device; (2) inseparable from the device; and (3) incapable of replacement without compromising the effectiveness of the device, in which case the equipment is ''subject to the EAR'' under ECCN 1A004.

Related Definitions: * * *

Items:

* * * * *

a. Gas masks, filter canisters and decontamination equipment therefor, designed or modified for defense against any of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

c. Detection systems, specially designed or modified for detection or identification of any of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

Technical Notes:

1. 1A004 includes equipment, ''parts'' and ''components'' that have been 'identified,' successfully tested to national standards or otherwise proven effective, for the detection of or defense against radioactive materials ''adapted for use in war,'' biological agents ''adapted for use in war,'' chemical warfare agent, 'simulants' or ''riot control agents,'' even if such equipment, ''parts'' or ''components'' are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.

* * * * *

28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A005 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph (1) in the List of Items Controlled section; and

c. By revising ''items'' paragraph a to read as follows:

1A005 Body armor, and specially designed ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Bulletproof and bullet resistant vests (body armor) NIJ levels III and IV, are ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Categories X(a) and XIII(e)). * * *

Related Definitions: * * *

Items:

a. Soft body armor not manufactured to military standards or specifications, or to their equivalents, and specially designed ''parts'' and ''components'' therefor;

* * * * *

29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A006 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph to read as follows:

1A006 Equipment, specially designed or modified for the disposal of improvised explosive devices, as follows (see List of Items Controlled), and specially designed ''parts,'' ''components'' and accessories therefor.

* * * * *

List of Items Controlled

* * * * *

Related Controls: Equipment specially designed for military use for the disposal of improvised explosive devices is ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category IV).

* * * * *

30. In Supplement No. 1 to part 774 (the Commerce Control List), Category

1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A007 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1A007 Equipment and devices, specially designed to initiate charges and devices containing energetic materials, by electrical means, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Equipment and devices specially designed for military use are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) This entry does not control detonators using only primary explosives, such as lead azide. (3) See also 3A229. (4) See 1E001 for ''development'' and ''production'' technology controls, and 1E201 for ''use'' technology controls.

* * * * *

31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A008 is amended:

a. By revising the heading;

b. By revising the introductory text of ''Related Controls'' paragraph (1) and the ''Related Controls'' paragraph (2) in the List of Items Controlled section; and

c. By revising the introductory text of ''items'' paragraph b to read as follows:

1A008 Charges, devices and ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) All of the following are ''subject to the ITAR'' (see 22 CFR parts 120 through 130): * * * (2) See also ECCNs 1C011, 1C018, 1C111, and 1C239 for additional controlled energetic materials. See ECCN 1E001 for the ''development'' or ''production'' ''technology'' for the commodities controlled by ECCN 1A008, but not for explosives or commodities that are ''subject to the ITAR.''

* * * * *

Items:

* * * * *

b. Linear shaped cutting charges having all of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A101 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled to read as follows:

1A101 Devices for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures, for applications usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km or their complete subsystems.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 1C101. (2) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), which describes similar commodities ''subject to the ITAR'' (See 22 CFR parts 120 through 130, including USML Category XIII).

* * * * *

33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A102 is amended by revising the heading to read as follows:

1A102 Resaturated pyrolized carbon-carbon ''parts'' and ''components'' designed for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

* * * * *

34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A290 is amended by revising the ''Related Controls'' paragraphs (1) and (3) in the List of Items Controlled section to read as follows:

1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) This entry does not control depleted uranium in fabricated forms for use in munitions. See 22 CFR part 121 for depleted uranium ''subject to the ITAR'' * * * (3) ''Natural uranium'' or ''depleted uranium'' or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A985 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1A985 Fingerprinting powders, dyes, and inks.

* * * * *

List of Items Controlled

* * * * *

Related Controls: See 3A981.

* * * * *

36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1A995 is amended by revising the heading to read as follows:

1A995 Protective and detection equipment not specially designed for military use and not controlled by ECCN 1A004 or ECCN 2B351, as follows (see List of Items Controlled), and ''parts'' and ''components'' not specially designed for military use and not controlled by ECCN 1A004 or ECCN 2B351 therefor.

* * * * *

37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B001 is amended:

a. By revising the heading; and

b. By revising ''items'' paragraph f.2 in the List of Items Controlled section to read as follows:

1B001 Equipment for the production or inspection of ''composite'' structures or laminates controlled by 1A002 or ''fibrous or filamentary materials'' controlled by 1C010, as follows (see List of Items Controlled), and specially designed ''parts,'' ''components'' and accessories therefor.

List of Items Controlled

* * * * *

Items:

* * * * *

f.2. Numerically controlled ultrasonic testing machines of which the motions for positioning transmitters or receivers are simultaneously coordinated and programmed in four or more axes to follow the three dimensional contours of the ''part'' or ''component'' under inspection;

* * * * *

38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B003 is amended:

a. By revising ''Related Controls'' paragraph in the List of Items Controlled section; and

b. By revising ''items'' paragraph c to read as follows:

1B003 Tools, dies, molds or fixtures, for ''superplastic forming'' or ''diffusion bonding'' titanium, aluminum or their alloys, specially designed for the manufacture of any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: For specially designed production equipment of systems, subsystems, and ''parts'' and ''components'' controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to 9A109, 9A111, and 9A116 to 9A120 usable in ''missiles,'' see 9B115.

* * * * *

Items:

* * * * *

c. Specially designed ''parts'' and ''components'' for structures specified by 1B003.a or for engines specified by 1B003.b.

* * * * *

39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B101 is amended:

a. By revising the heading; and

b. By revising ''Related Definitions'' paragraph in the List of Items Controlled section to read as follows:

1B101 Equipment, other than that controlled by 1B001, for the ''production'' of structural composites, fibers, prepregs or preforms, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled); and specially designed ''parts,'' ''components'' and accessories therefor.

* * * * *

List of Items Controlled

* * * * *

Related Definitions: Examples of ''parts,'' ''components'' and accessories for the machines controlled by this entry are molds, mandrels, dies, fixtures and tooling for the preform pressing, curing, casting, sintering or bonding of composite structures, laminates and manufactures thereof.

* * * * *

40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B102 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the introductory text of ''items'' paragraph b to read as follows:

1B102 Metal powder ''production equipment,'' other than that specified in 1B002, and ''parts'' and ''components'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

* * * * *

Items:

* * * * *

b. Specially designed ''parts'' and ''components'' for ''production equipment'' specified in 1B002 or 1B102.a.

* * * * *

41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B115 is amended:

a. By revising the heading; and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

1B115 Equipment, other than that controlled in 1B002 or 1B102, for the ''production'' of propellant or propellant constituents (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

* * * * *

42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B117 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1B117 Batch mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having all of the following characteristics (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

Related Controls: See 1B115, 1B118, and 1B119.

* * * * *

43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B118 is amended:

a. By revising the heading;

b. By revising ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1B118 Continuous mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having any of the following characteristics (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

Related Controls: See 1B115, 1B117, and 1B119.

* * * * *

44. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B119 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1B119 Fluid energy mills usable for grinding or milling propellant or propellant constituents specified in 1C011.a, 1C011.b or 1C111, or on the U.S. Munitions List, and specially

designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

Related Controls: See 1B115, 1B117 and 1B118.

* * * * *

45. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1B225 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1B225 Electrolytic cells for fluorine production with a production capacity greater than 250 g of fluorine per hour.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) See ECCN 1B999 for specific processing equipment, n.e.s.

* * * * *

46. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C002 is amended by revising ''items'' paragraph c.1.a to read as follows:

1C002 Metal alloys, metal alloy powder and alloyed materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c.1.a. Nickel alloys (Ni-Al-X, Ni-X–Al) qualified for turbine engine ''parts'' or ''components,'' i.e. with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 μm in 109 alloy particles;

* * * * *

47. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C007 is amended by revising ''items'' paragraph e.3 to read as follows:

1C007 Ceramic base materials, non-''composite'' ceramic materials, ceramic-''matrix'' ''composite'' materials and precursor materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

e.3. Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen ''parts'' and ''components'');

* * * * *

48. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C011 is amended by revising the introductory text of the ''Related Controls'' paragraph (2) in the List of Items Controlled to read as follows:

1C011 Metals and compounds, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (2) All of the following are ''subject to the ITAR'' (see 22 CFR parts 120 through 130): * * *

* * * * *

49. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C101 is amended by revising the ''Related Controls'' paragraph (3) in the List of Items Controlled to read as follows:

1C101 Materials for Reduced Observables such as Radar Reflectivity, Ultraviolet/Infrared Signatures and Acoustic Signatures (i.e., Stealth Technology), Other than Those Controlled by 1C001, for applications usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km, and their subsystems.

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), which describes similar commodities ''subject to the ITAR'' (See 22 CFR parts 120 through 130, including USML Category XIII).

* * * * *

50. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C102 is amended by revising the heading to read as follows:

1C102 Resaturated pyrolized carbon-carbon materials designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

* * * * *

51. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C107 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1C107 Graphite and ceramic materials, other than those controlled by 1C007, which can be machined to any of the following products as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 1C004, 1C007, and 1C298. (2) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the ITAR, which describes similar commodities ''subject to the ITAR'' (See 22 CFR parts 120 through 130, including USML Category XIII). (3) ''Special fissile materials'' and ''other fissile materials''; except, four ''effective grams'' or less when contained in a sensing component in instruments are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

52. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C111 is amended by revising the ''Related Controls'' paragraphs (1) and (2) in the List of Items Controlled to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Butacene, as defined by 1C111.c.1, and some HTPB are ''subject to the ITAR.'' (See 22 CFR parts 120 through 130, including USML Category V, other ferrocene derivatives). (2) See 1C018 for controls on oxidizers that are composed of fluorine and one or more of the following—other halogens, oxygen, or nitrogen. Solid

oxidizer substances are ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category V). * * *

* * * * *

53. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C117 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1C117 Materials for the fabrication of missile ''parts'' or ''components'' for rockets or missiles capable of achieving a ''range'' equal to or greater than 300 km, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See 1C226.

* * * * *

54. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C233 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

1C233 Lithium enriched in the lithium-6 (^{6}Li) isotope to greater than its natural isotopic abundance, and products or devices containing enriched lithium, as follows: elemental lithium, alloys, compounds, mixtures containing lithium, manufactures thereof, and waste or scrap of any of the foregoing.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See ECCNs 1E001 (''development'' and ''production'') and 1E201 (''use'') for technology for items controlled by this entry. (2) See ECCN 1B233 for lithium isotope separation facilities or plants, and equipment therefor. (3) Facilities or plants specially designed or prepared for the separation of lithium isotopes are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

55. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C239 is amended by revising the ''Related Controls'' paragraph (3) in the List of Items Controlled to read as follows:

1C239 High explosives, other than those controlled by the U.S. Munitions List, or substances or mixtures containing more than 2% by weight thereof, with a crystal density greater than 1.8 g/cm^3 and having a detonation velocity greater than 8,000 m/s.

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) High explosives for military use are ''subject to the ITAR'' (see 22 CFR part 121.12).

* * * * *

56. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C240 is amended by revising the heading to read as follows:

1C240 Nickel powder or porous nickel metal, other than nickel powder or porous nickel metal, specially prepared for the manufacture of gaseous diffusion barriers subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110), as follows (see List of Items Controlled).

* * * * *

57. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C298 is amended:

a. By revising the License Requirement Note paragraph in the License Requirements section; and

b. By revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

1C298 Graphite with a boron content of less than 5 parts per million and a density greater than 1.5 grams per cubic centimeter that is intended for use other than in a nuclear reactor.

License Requirements

* * * * *

License Requirement Note: Some graphite intended for use in a nuclear reactor is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 1C107. (2) Graphite having a purity level of less than 5 parts per million ''boron equivalent'' as measured according to ASTM standard C–1233–98 and intended for use in a nuclear reactor is subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

58. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C350 is amended:

a. By revising ''Note to Mixtures'' paragraph b and ''Technical Notes'' paragraph 1 in the License Requirements section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled to read as follows:

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

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Licenses Requirements Notes:

* * * * *

2. * * *

* * * * *

Notes to Mixtures: * * *

* * * * *

b. Percent Weight Calculation. When calculating the percentage, by weight, of ''parts'' or ''components'' in a chemical mixture, include all ''parts'' and ''components'' of the mixture, including those that act as solvents.

* * * * *

Technical Notes: * * *

1. For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more ''parts'' or ''components'' that do not react together under normal storage conditions.

* * * * *

List of Items Controlled

* * * * *

Related Controls: See USML Category XIV(c) for related chemicals ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

59. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C351 is amended by revising the ''Related Controls'' paragraph (1) in the List of Items Controlled to read as follows:

1C351 Human and zoonotic pathogens and ''toxins,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See USML

Category XIV and § 121.7 for additional CWC Schedule 1 chemicals that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). * * *

* * * * *

60. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C355 is amended;

a. By revising the heading; and

b. By revising ''Note to Mixtures'' paragraph b and ''Technical Notes'' paragraph 1 in the License Requirements section to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

License Requirements

* * * * *

Licenses Requirements Notes:

* * * * *

2. * * *

* * * * *

Notes to Mixtures: * * *

* * * * *

b. Percent Weight Calculation. When calculating the percentage, by weight, of ''parts'' or ''components'' in a chemical mixture, include all ''parts'' and ''components'' of the mixture, including those that act as solvents.

* * * * *

Technical Notes: * * *

1. For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more ''parts'' or ''components'' that do not react together under normal storage conditions.

* * * * *

61. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C992 is amended by revising the ''Related Definitions'' paragraphs (1), (3) and (4) in the List of Items Controlled to read as follows:

1C992 Commercial charges and devices containing energetic materials, n.e.s. and nitrogen trifluoride in a gaseous state.

* * * * *

List of Items Controlled

* * * * *

Related Definitions: (1) Items controlled by this entry 1C992 are those materials not ''subject to the ITAR'' (see 22 CFR parts 120 through 130) or controlled by ECCN 1C018. * * * (3) The individual USML controlled energetic materials, even when compounded with other materials, remain ''subject to the ITAR'' when not incorporated into explosive devices or charges controlled by this entry. (4) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

62. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1C996 is amended by revising the heading to read as follows:

1C996 Hydraulic fluids containing synthetic hydrocarbon oils, not controlled by 1C006, having all the following characteristics (see List of Items Controlled).

* * * * *

63. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1D002 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled to read as follows:

1D002 ''Software'' for the ''development'' of organic ''matrix,'' metal ''matrix'' or carbon ''matrix'' laminates or ''composites''.

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Software'' for items controlled by 1A102 are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

64. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1D103 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled to read as follows:

1D103 ''Software'' specially designed for reduced observables such as radar reflectivity, ultraviolet/infrared signatures and acoustic signatures, for applications usable in rockets, missiles, or unmanned aerial vehicles capable of delivering at least a 500 kg payload to a ''range'' equal to or greater than 300 km and their complete subsystems.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * * (2) For software that meets the definition of defense articles under 22 CFR 120.3 of the International Traffic in Arms Regulations (ITAR), which describes similar software that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category XIII).

* * * * *

65. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1D993 is amended by revising the heading to read as follows:

1D993 ''Software'' specially designed for the ''development,'' ''production'' or ''use'' of materials controlled by 1C210.b, or 1C990.

* * * * *

66. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1E001 is amended:

a. By revising the License Exception TSR paragraph (2) introductory text in the License Exceptions section;

b. By revising the Special Conditions for License Exception STA section; and

c. By revising the ''Related Controls'' paragraph (4) in the List of Items Controlled section to read as follows:

1E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A006.b, 1A007, 1A008, 1A101, 1B (except 1B999), or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C995 to 1C999).

* * * * *

License Exceptions

* * * * *

TSR: * * *

(2) Exports and reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''technology'' for the ''development'' or production'' of the following:

* * * * *

Special Conditions for License Exception STA

License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment and materials specified by ECCNs 1A002, 1C001, 1C007.c or d, or 1C010.c or d to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

List of Items Controlled

* * * * *

Related Controls: * * * (4) ''Technology'' for items described in ECCN 1A102 is ''subject

to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

67. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' Export Control Classification Number (ECCN) 1E101 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled to read as follows:

1E101 ''Technology,'' in accordance with the General Technology Note, for the ''use'' of commodities and software controlled by 1A101, 1A102, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1D001, 1D101, or 1D103.

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Technology'' for items controlled by 1A102 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

68. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A001 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

2A001 Anti-friction bearings and bearing systems, as follows, (see List of Items Controlled) and ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (2) Quiet running bearings are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

69. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A291 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section;

c. By revising the ''Related Controls'' paragraph (5) in the List of Items Controlled; and

d. By revising the ''items'' paragraph d in the List of Items Controlled section to read as follows:

2A291 Equipment, except items controlled by 2A290, related to nuclear material handling and processing and to nuclear reactors, and ''parts,'' ''components'' and accessories therefor (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

Related Controls: * * * (5) Nuclear radiation detection and measurement devices specially designed or modified for military purposes are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

* * * * *

d. Commodities, ''parts,'' ''components'' and accessories specially designed or prepared for use with nuclear plants (*e.g.,* snubbers, airlocks, pumps, reactor fuel charging and discharging equipment, containment equipment such as hydrogen recombiner and penetration seals, and reactor and fuel inspection equipment, including ultrasonic or eddy current test equipment).

* * * * *

70. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A292 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

2A292 Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.

* * * * *

List of Items Controlled

Unit: Pressure tubes, pipes, and fittings in kilograms; ''parts,'' ''components'' and valves in number

* * * * *

71. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A983 is amended by revising the heading to read as follows:

2A983 Explosives or detonator detection equipment, both bulk and trace based, consisting of an automated device, or combination of devices for automated decision making to detect the presence of different types of explosives, explosive residue, or detonators; and ''parts'' and ''components,'' n.e.s.

* * * * *

72. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A984 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph (1) in the List of Items Controlled section to read as follows:

2A984 Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution of 0.5 milliradian up to and including 1 milliradian at a standoff distance of 100 meters; and ''parts'' and ''components,'' n.e.s.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

73. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A991 is amended:

a. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section; and

b. By revising the introductory text of paragraphs a, a.2, and b.1 of the ''items'' paragraph in the List of Items Controlled section to read as follows:

2A991 Bearings and bearing systems not controlled by 2A001.

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (2) Quiet running bearings are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

a. Ball bearings or Solid ball bearings, having tolerances specified by the manufacturer in accordance with ABEC 7, ABEC 7P, or ABEC 7T or ISO Standard Class 4 or better (or equivalents) and having any of the following characteristics.

* * * * *

a.2. With lubricating elements or ''part'' or ''component'' modifications that, according to the manufacturer's specifications, are specially designed to enable the bearings to operate at speeds exceeding 2.3 million DN.

* * * * *

b. * * *

b.1. With lubricating elements or ''part'' or ''component'' modifications that, according to the manufacturer's specifications, are specially designed to enable the bearings to operate at speeds exceeding 2.3 million DN; or

* * * * *

74. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A994 is amended by revising the heading to read as follows:

2A994 Portable electric generators and specially designed ''parts'' and ''components.''

* * * * *

75. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B001 is amended:

a. By revising the heading;

b. By revising the parenthetical phrase following sentence (2) of the NP paragraph in the License Requirements section;

c. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

d. By revising Note 2 paragraph d and the introductory text to ''items'' paragraph f in the List of Items Controlled section to read as follows:

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or ''composites,'' which, according to the manufacturer's technical specifications, can be equipped with electronic devices for ''numerical control''; and specially designed ''parts'' and ''components'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * * * *	
NP applies to 2B001.a, .b, .c, and .d, EXCEPT: * * * (2) * * * (Machines may have drilling and/or milling capabilities for machining ''parts'' and ''components'' with diameters less than 42 mm); * * *	NP Column 1
* * * * *	

* * * * *

List of Items Controlled

Unit: Machine tools in number; ''parts'' and ''components'' in $ value

* * * * *

Items:

* * * * *

Note 2: * * *

d. Engraved or faceted jewellery ''parts'' and ''components.''

* * * * *

f. Deep hole drilling machines and turning machines modified for deep hole drilling, having a maximum depth of bore capability exceeding 5 m and specially designed ''parts'' and ''components'' therefor.

* * * * *

76. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B003 is amended:

a. By revising the heading;

b. By removing the License Requirement Notes section; and

c. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

2B003 ''Numerically controlled'' or manual machine tools, and specially designed ''parts,'' ''components,'' controls and accessories therefor, specially designed for the shaving, finishing, grinding or honing of hardened (R_c = 40 or more) spur, helical and double-helical gears with a pitch diameter exceeding 1,250 mm and a face width of 15% of pitch diameter or larger finished to a quality of AGMA 14 or better (equivalent to ISO 1328 class 3).

* * * * *

List of Items Controlled

Unit: Machine Tools in number; ''parts,'' ''components,'' controls and accessories in $ value

* * * * *

77. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B004 is amended:

a. By revising the heading: and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

2B004 Hot ''isostatic presses'' having all of the characteristics described in the List of Items Controlled, and specially designed ''parts'' and ''components'' and accessories therefor.

* * * * *

List of Items Controlled

Unit: Presses in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

78. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B005 is amended by revising the heading to read as follows:

2B005 Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, as follows, for non-electronic substrates, by processes shown in the Table and associated Notes following 2E003.f (see List of Items Controlled), and specially designed automated handling, positioning, manipulation and control ''parts'' and ''components'' therefor.

* * * * *

79. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B105 is amended by revising related controls (3) in the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

2B105 Chemical vapor deposition (CVD) furnaces, other than those controlled by 2B005.a, designed or modified for the densification of carbon-carbon composites.

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) Also see ECCNs 2B005, 2B117, 2B226 and 2B227.

* * * * *

80. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B109 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising ''Technical Notes'' paragraph (2) to read as follows:

2B109 Flow-forming machines, other than those controlled by 2B009, and specially designed ''parts'' and ''components'' therefor (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

* * * * *

Items:

* * * * *

Technical Notes:

* * * * *

2. 2B109 does not control machines that are not usable in the ''production'' of propulsion ''parts,'' ''components'' and equipment (e.g., motor cases) for systems in 9A005, 9A007.a, or 9A105.a.

81. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B116 is amended:

a. By revising the heading; and

b. By revising related controls (3) in the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

2B116 Vibration test systems and equipment, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km and their subsystems, and ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) Also see ECCNs 9B106 and 9B990.

* * * * *

82. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B201 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the Note to paragraph a to read as follows:

2B201 Machine tools, other than those controlled by 2B001, for removing or cutting metals, ceramics or ''composites,'' which, according to manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

* * * * *

Items:

a. * * *

Note: Item 2B201.a. does not control bar machines (Swissturn), limited to machining only bar feed thru, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. Machines may have drilling and/or milling capabilities for machining ''parts'' and ''components'' with diameters less than 42 mm.

* * * * *

83. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B206 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

2B206 Dimensional inspection machines, instruments or systems, other than those described in 2B006, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

* * * * *

84. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B209 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

2B209 Flow forming machines, spin forming machines capable of flow forming functions, other than those controlled by 2B009 or 2B109, and mandrels, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

85. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B229 is amended by revising the introductory text to ''items'' paragraph b in the List of Items Controlled section to read as follows:

2B229 Centrifugal multiplane balancing machines, fixed or portable, horizontal or vertical, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Centrifugal balancing machines designed for balancing hollow cylindrical rotor ''parts'' or ''components'' and having all of the following characteristics:

* * * * *

86. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B290 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

2B290 ''Numerically controlled'' machine tools not controlled by 2B001 or 2B201.

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

87. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B350 is amended:

a. By revising the ''Related Definitions'' paragraph in the List of Items Controlled section; and

b. By adding a note at the end of the ''items'' paragraph, after the Technical Notes, in the List of Items Controlled section to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Definitions: For purposes of this entry the term 'chemical warfare agents' include those agents ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

Items:

* * * * *

Note: See Categories V and XIV of the United States Munitions List for all chemicals that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

88. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B351 is amended:

a. By revising the heading; and

b. By revising ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

2B351 Toxic gas monitoring systems and their dedicated detecting ''parts'' and ''components'' (i.e., detectors, sensor devices, and replaceable sensor cartridges), as follows, except those systems and detectors controlled by ECCN 1A004.c (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See ECCN 2D351 for ''software'' for toxic gas monitoring systems and their dedicated detecting ''parts'' and ''components'' controlled by this ECCN. Also see ECCN 1A004, which controls chemical detection systems and specially designed ''parts'' and ''components'' therefor that are specially designed or modified for detection or identification of chemical warfare agents, but not specially designed for military use, and ECCN 1A995, which controls certain detection equipment, ''parts'' and ''components'' not controlled by ECCN 1A004 or by this ECCN.

* * * * *

89. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B352 is amended:

a. By revising the heading;

b. By revising ''Related Controls'' paragraph in the List of Items Controlled section;

c. By revising ''items'' paragraphs c.3, d.1.b.2, d.2 and the introductory text of ''items'' paragraph h in the List of Items Controlled section; and

d. By revising ''Technical Notes'' paragraph 2 at the end of the ''items'' paragraph to read as follows:

2B352 Equipment capable of use in handling biological materials and ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry. Also see ECCN 9A120 for controls on certain ''UAV'' systems designed or modified to dispense an aerosol and capable of carrying elements of a payload in the form of a particulate or liquid, other than fuel ''parts'' or ''components'' of such vehicles, of a volume greater than 20 liters.

* * * * *

Items:

* * * * *

c.3. ''Parts'' or ''components'' of polished stainless steel or titanium; and

* * * * *

d.1.b.2. Using disposable or single-use filtration ''parts'' or ''components''.

* * * * *

d.2. Cross (tangential) flow filtration ''parts'' or ''components'' (e.g., modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m2) for each ''part'' or ''component'' and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

* * * * *

h. Spraying or fogging systems and ''parts'' and ''components'' therefor, as follows:

* * * * *

Technical Notes:

* * * * *

2. This ECCN does not control spraying or fogging systems, ''parts'' and ''components,'' as specified in 2B352.h., that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

* * * * *

90. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B991 is amended by revising the heading to read as follows:

2B991 Numerical control units for machine tools and ''numerically controlled'' machine tools, n.e.s. (see List of Items Controlled).

* * * * *

91. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B992 is amended by revising the heading to read as follows:

2B992 Non-''numerically controlled'' machine tools for generating optical quality surfaces, (see List of Items Controlled) and specially designed ''parts'' and ''components'' therefor.

* * * * *

92. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B996 is amended by revising the heading to read as follows:

2B996 Dimensional inspection or measuring systems or equipment not controlled by 2B006 or 2B206, as follows (see List of Items Controlled).

* * * * *

93. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B998 is amended by revising ''items'' paragraph c in the List of Items Controlled Section to read as follows:

2B998 Assemblies, circuit boards or inserts specially designed for machine tools controlled by 2B991, or for equipment controlled by 2B993, 2B996 or 2B997.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. Specially designed printed circuit boards with mounted ''parts'' or ''components'' capable of upgrading, according to the manufacturer's specifications, ''numerical control'' units, machine tools or feed-back devices to or above the levels specified in ECCNs 2B991, 2B993, 2B996, 2B997, or 2B998.

* * * * *

94. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2D351 is amended by revising the heading to read as follows:

2D351 Dedicated ''software'' for toxic gas monitoring systems and their dedicated detecting ''parts'' and ''components'' controlled by ECCN 2B351.

* * * * *

95. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2D984 is amended by revising the ''Related Controls'' paragraph (1) in the List of Items Controlled section to read as follows:

2D984 ''Software'' ''required'' for the ''development,'' ''production'' or ''use'' of concealed object detection equipment controlled by 2A984.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) ''Software'' ''required'' for the ''development,'' ''production'' or ''use'' of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). * * *

* * * * *

96. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, the Category 2E—Materials Processing Table; Deposition Techniques is amended:

a. By revising paragraph 17 of the Notes to Table on Deposition Techniques section; and

b. By revising paragraph 1.b of the Accompanying Technical Information to Table on Deposition Techniques section, to read as follows;

Category 2E—Materials Processing Table; Deposition Techniques

* * * * *

Notes to Table on Deposition Techniques

* * * * *

17. ''Technology'' specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables, valves for faucets, acoustic diaphragms for speakers, engine ''parts'' and ''components'' for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones, medical devices or molds, for casting or molding of plastics, manufactured from alloys containing less than 5% beryllium.

* * * * *

Accompanying Technical Information to Table on Deposition Techniques:

1. * * *

b. Visual and macroscopic criteria for acceptance of the cleaned ''part'' or ''component;''

97. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E984 is amended by revising the ''Related Controls'' paragraph (1) in the List of Items Controlled section to read as follows:

2E984 ''Technology'' ''required'' for the ''development,'' ''production'' or ''use'' of equipment controlled by 2A984 or ''required'' for the ''development'' of ''software'' controlled by 2D984.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) ''Technology'' ''required'' for the ''development,'' ''production'' or ''use'' of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian (a lower milliradian number means a more accurate image resolution) at a standoff distance of 100 meters or ''required'' for the ''development'' of ''software'' ''required'' for the ''development,'' ''production'' or ''use'' of concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution less than 0.5 milliradian at a standoff distance of 100 meters is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). * * *

* * * * *

98. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics is amended by revising the ''Note'' that immediately follows the Category 3(Systems, Equipment and Components) heading to read as follows:

CATEGORY 3—ELECTRONICS

A. SYSTEMS, EQUIPMENT, AND COMPONENTS

Note 1: The control status of equipment, ''parts'' and ''components'' described in 3A001 or 3A002, other than those described in 3A001.a.3 to 3A001.a.10, 3A001.a.12 or 3A001.a.13, which are specially designed for or which have the same functional characteristics as other equipment is determined by the control status of the other equipment.

* * * * *

99. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph (1), the introductory text of paragraph (2), and paragraph (2)(c) in the List of Items Controlled section; and

c. By revising the introductory text to ''items'' paragraphs b, c, and d in the List of Items Controlled section to read as follows:

3A001 Electronic ''components'' and specially designed ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) The following commodities are ''subject to the ITAR'' when ''space qualified'' and operating at frequencies higher than 31.8 GHz: helix tubes (traveling wave tubes (TWT)) defined in 3A001.b.1.a.4.c; microwave solid state amplifiers defined in 3A001.b.4.b traveling wave tube amplifiers (TWTA) defined in 3A001.b.8; and derivatives thereof; (2) The following commodities are also ''subject to the ITAR (see 22 CFR parts 120 through 130):'' * * * (c) All specifically designed or modified systems or subsystems, ''parts,'' ''components,'' accessories, attachments, and associated equipment controlled by Category XV (e) of the USML. See also 3A101, 3A201, and 3A991.

* * * * *

Items:

* * * * *

b. Microwave or millimeter wave ''parts'' or ''components,'' as follows:

* * * * *

c. Acoustic wave devices as follows and specially designed ''parts'' and ''components'' therefor:

* * * * *

d. Electronic devices and circuits containing ''parts'' or ''components,'' manufactured from ''superconductive'' materials, specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

* * * * *

100. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A002 is amended by revising the first sentence in ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

3A002 General purpose electronic equipment and accessories therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Space-qualified'' atomic frequency standards defined in 3A002.g.1 are ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category XV). * * *

* * * * *

101. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A003 is amended by revising the heading to read as follows:

3A003 Spray cooling thermal management systems employing closed loop fluid handling and reconditioning equipment in a sealed enclosure where a dielectric fluid is sprayed onto electronic ''parts'' or ''components'' using specially designed spray nozzles that are designed to maintain electronic ''parts'' or ''components'' within their operating temperature range, and specially designed ''parts'' and ''components'' therefor.

* * * * *

102. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A101 is amended:

a. By revising the heading; and

b. By revising ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

3A101 Electronic equipment, devices, ''parts'' and ''components,'' other than those controlled by 3A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: Items controlled in 3A101.a are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

103. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A201 is amended:

a. By revising the heading;

b. By revising the Note to ''items'' paragraph c in the List of Items Controlled section to read as follows:

3A201 Electronic ''parts'' and ''components,'' other than those controlled by 3A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. * * *

Note: 3A201.c does not control accelerators that are ''parts'' or ''components'' of devices designed for purposes other than electron beam or X-ray radiation (electron microscopy, for example) nor those designed for medical purposes.

104. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A225 is amended:

a. By revising the heading; and

b. By adding a heading Note to read as follows:

3A225 Frequency changers (also known as converters or inverters) or generators, other than those described in the Heading Note to this entry, having all of the following characteristics (see List of Items Controlled).

HEADING NOTE: This entry does not include frequency changers (converters or inverters) specially designed or prepared to supply motor stators for gas centrifuge enrichment, having all of the following characteristics, and specially designed ''parts'' and ''components'' therefor: (1) multiphase output of 600 to 2000 Hz; (2) frequency control better than 0.1%; (3) harmonic distortion of less than 2%; and an efficiency greater than 80% that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

105. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A226 is amended:

a. By revising the heading; and

b. By adding a heading Note to read as follows:

3A226 High-power direct current power supplies, other than those described in the Heading Note to this entry, having both of the following characteristics (see List of Items Controlled).

HEADING NOTE: This entry does not include magnet power supplies (high power, direct current), specially designed or prepared for electromagnetic separation process, having all of the following characteristics: (1) Capable of continuous operation with a current output of 500 A or greater at a voltage of 100 V or greater; and

(2) current or voltage regulation better than 0.01% over a period of 8 hours that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

106. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A227 is amended:

a. By revising the heading; and

b. By adding a heading Note to read as follows:

3A227 High-voltage direct current power supplies, other than those described in the Heading Note to this entry, having both of the following characteristics (see List of Items Controlled).

HEADING NOTE: This entry does not include high voltage power supplies for ion sources, specially designed or prepared for electromagnetic separation process, having all of the following characteristics: (1) Capable of continuous operation; (2) output voltage of 20,000 V or greater; (3) output current of 1 A or greater; and (4) voltage regulation of better than 0.01% over a period of 8 hours that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

107. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A229 is amended by revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

3A229 Firing sets and equivalent high-current pulse generators (for detonators controlled by 3A232), as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (2) High explosives and related equipment for military use are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

108. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A230 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

3A230 High-speed pulse generators having both of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See ECCNs 3E001 (''development'' and ''production'') and 3E201 (''use'') for technology for items controlled under this entry. (2) See ECCNs 3A002.d.1, 3A992.a and 3A999.d.

* * * * *

109. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A231 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

3A231 Neutron generator systems, including tubes, having both of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

* * * * *

110. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A232 is amended by revising the ''Related Controls'' paragraph (3) in the List of Items Controlled section to read as follows:

3A232 Detonators and multipoint initiation systems, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) High explosives and related equipment for military use are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

111. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A233 is amended by revising the heading to read as follows:

3A233 Mass spectrometers, other than specially designed or prepared auxiliary systems, equipment, ''parts'' and ''components'' for isotope separation plants, made of or protected by UF_6 resistant materials that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110), capable of measuring ions of 230 atomic mass units or greater and having a resolution of better than 2 parts in 230, and ion sources therefor.

* * * * *

112. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A292 is amended:

a. By revising the heading; and

b. By revising the introductory text to the Note at the end of the ''items'' paragraph in the List of Items Controlled section to read as follows:

3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.a.5, and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

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Note: Specially designed ''parts'' and ''components'' controlled by this item are the following, for analog oscilloscopes:

* * * * *

113. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A980 is amended by revising the heading to read as follows:

3A980 Voice print identification and analysis equipment and ''specially designed'' ''components'' therefor, n.e.s.

* * * * *

114. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A981 is amended by revising the heading to read as follows:

3A981 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and ''specially designed'' ''components'' and accessories therefor, n.e.s.

* * * * *

115. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A982 is amended by revising the heading to read as follows:

3A982 Microwave or millimeter wave ''parts'' and ''components'' that operate at frequencies below those controlled by 3A001 as follows (See List of Items Controlled).

* * * * *

116. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A991 is amended:

a. By revising the heading; and

b. By revising the introductory text ''items'' paragraph l in the List of Items Controlled section to read as follows:

3A991 Electronic devices, and ''parts'' and ''components'' not controlled by 3A001.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

l. Circuits or systems for electromagnetic energy storage, containing ''parts'' or ''components'' manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

* * * * *

117. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A999 is amended:

a. By revising the ''Related Controls'' paragraph in the List of Items Controlled section; and

b. By revising ''items'' paragraph c in the List of Items Controls section to read as follows:

3A999 Specific processing equipment, n.e.s., as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 3A225 (for frequency changers capable of operating in the frequency range of 600 Hz and above), and 3A233. (2) Specially designed or prepared auxiliary systems, equipment, ''parts'' and ''components'' for isotope separation plants, made of or protected by UF_6 resistant materials are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

Items:

* * * * *

c. All flash x-ray machines, and ''parts'' or ''components'' of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers;

* * * * *

118. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B001 is amended by revising the heading to read as follows:

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled) and specially designed ''parts,'' ''components'' and accessories therefor.

* * * * *

119. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B002 is amended by revising the heading to read as follows:

3B002 Test equipment specially designed for testing finished or unfinished semiconductor devices as follows (see List of Items Controlled) and specially designed ''parts,'' ''components'' and accessories therefor.

* * * * *

120. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B991 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising ''items'' paragraph a and the introductory text of ''items'' paragraphs b.1 and b.2 to read as follows:

3B991 Equipment not controlled by 3B001 for the manufacture of electronic ''parts,'' ''components'' and materials (see List of Items Controlled), and specially designed ''parts,'' ''components'' and accessories therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

Items:

* * * * *

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed ''parts'' and ''components'' therefor controlled by 3A001 or 3A991;

* * * * *

b.1. Equipment for the processing of materials for the manufacture of devices, ''parts'' and ''components'' as specified in the heading of 3B991.b, as follows:

* * * * *

b.2. Masks, mask ''substrates,'' mask-making equipment and image transfer equipment for the manufacture of devices, ''parts'' and ''components'' as specified in the heading of 3B991, as follows:

* * * * *

121. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B992 is amended:

a. By revising the heading;

b. By revising ''items'' paragraph a; and

c. By revising paragraph 3 of the ''Notes'' to ''items'' paragraph b.4.b to read as follows:

3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic ''components'' and materials, and specially designed ''parts,'' ''components'' and accessories therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed ''parts'' and ''components'' therefor controlled by 3A001 or 3A991;

* * * * *

Notes: * * *

* * * * *

3. Electronic ''parts,'' ''components,'' ''assemblies'' and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with ''user accessible programmability''.

122. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D001 is amended by revising the introductory text of ''Related Controls'' paragraph (1) in the List of Items Controlled section to read as follows:

3D001 ''Software'' specially designed for the ''development'' or ''production'' of equipment controlled by 3A001.b to 3A002.g or 3B (except 3B991 and 3B992).

* * * * *

List of Items Controlled

* * * * *

Related Controls: ''Software'' specially designed for the ''development'' or ''production'' of the following equipment is ''subject to the ITAR'' (see 22 CFR parts 120 through 130):

* * * * *

123. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D980 is amended by revising the heading to read as follows:

3D980 ''Software'' specially designed for the ''development,'' ''production'' or ''use'' of commodities controlled by 3A980 and 3A981.

* * * * *

124. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D982 is amended by revising the heading to read as follows:

3D982 ''Software'' specially designed for the ''development'' or ''production'' of microwave or millimeter wave ''parts'' and ''components'' classified under ECCN 3A982.

* * * * *

125. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3D991 is amended by revising the heading to read as follows:

3D991 ''Software'' specially designed for the ''development,'' ''production'' or

''use'' of electronic devices, ''parts'' or ''components'' controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992; or ''software'' specially designed for the ''use'' of equipment controlled by 3B001.g and .h.

* * * * *

126. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E001 is amended:

a. By revising the introductory text of ''Related Controls'' paragraph (2) in the List of Items Controlled section; and

b. By revising ''Note 1'' at the end of the List of Items Controlled to read as follows:

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).

* * * * *

List of Items Controlled

* * * * *

Related Controls: *** (2) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of the following commodities is ''subject to the ITAR'' (see 22 CFR parts 120 through 130):

* * * * *

Items:

* * * * *

Note 1: 3E001 does not control ''technology'' for the ''production'' of equipment, ''parts'' or ''components'' controlled by 3A003.

* * * * *

127. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E003 is amended:

a. By revising ''Related Controls'' paragraph (1) in the List of Items Controlled section; and

b. By revising ''items'' paragraphs d and f to read as follows:

3E003 Other ''technology'' for the ''development'' or ''production'' of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Technology for the ''development'' or ''production'' of ''space qualified'' electronic vacuum tubes operating at frequencies of 31.8 GHz or higher, described in 3E003.g, is ''subject to the ITAR'' (see 22 CFR parts 120 through 130);

* * * * *

Items:

* * * * *

d. Substrates of films of diamond for electronic ''parts'' or ''components;''

* * * * *

f. Substrates of silicon carbide for electronic ''parts'' or ''components;''

* * * * *

128. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E980 is amended by revising the heading to read as follows:

3E980 ''Technology'' specially designed for ''development,'' ''production'' or ''use'' of commodities controlled by 3A980 and 3A981.

* * * * *

129. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E982 is amended by revising the heading to read as follows:

3E982 ''Technology'' ''require'' for the ''development'' or ''production'' of microwave or millimeter wave ''parts'' or ''components'' classified under ECCN 3A982.

* * * * *

130. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E991 is amended by revising the heading to read as follows:

3E991 ''Technology'' for the ''development,'' ''production'' or ''use'' of electronic devices, ''parts'' or ''components'' controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 or 3B992, or materials controlled by 3C992.

* * * * *

131. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4–Computers, Export Control Classification Number (ECCN) 4A001 is amended:

a. By revising the heading;

b. By revising ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

4A001 Electronic computers and related equipment, having any of the following (see List of Items Controlled), and ''electronic assemblies'' and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Computers and related equipment in number; ''electronic assemblies,'' ''parts'' and ''components'' in $ value

Related Controls: See also 4A101 and 4A994. See Category 5—Part 2 for electronic computers and related equipment performing or incorporating ''information security'' functions as the primary function. Equipment designed or rated for transient ionizing radiation is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

132. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A003 is amended:

a. By revising the heading;

b. By removing Note 2 in at the end of the License Requirements section;

c. By adding a Reporting Requirements section after the License Requirements section;

d. By revising the License Exception GBS paragraph in the License Exceptions section; and

e. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

4A003 ''Digital computers,'' ''electronic assemblies'' and related equipment therefor, as follows (see List of Items Controlled) and specially designed ''parts'' and ''components'' therefor.

* * * * *

Reporting Requirements

Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.

License Exceptions

* * * * *

GBS: Yes, for 4A003.e, and .g and specially designed ''parts'' and ''components'' therefor, exported separately or as part of a system.

* * * * *

List of Items Controlled

Unit: Computers and related equipment in number; ''electronic assemblies,'' ''parts'' and ''components'' in $ value

* * * * *

133. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A004 is amended:

a. By revising the heading; and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

4A004 Computers as follows (see List of Items Controlled) and specially designed related equipment, ''electronic

assemblies,'' and ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Computers and related equipment in number; ''electronic assemblies,'' ''parts'' and ''components'' in $ value

* * * * *

134. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A101 is amended by revising the ''Note'' to ''items'' paragraph b in the List of Items Controlled section to read as follows:

4A101 Analog computers, ''digital computers'' or digital differential analyzers, other than those controlled by 4A001 designed or modified for use in ''missiles,'' having any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

Note: 'Radiation hardened' means that the ''part,'' ''component'' or equipment is designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5 X 105 rads (Si).

* * * * *

135. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A102 is amended by revising the heading to read as follows:

4A102 ''Hybrid computers'' specially designed for modelling, simulation or design integration of ''missiles'' or their subsystems. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

* * * * *

136. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A994 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the introductory text to ''items'' paragraphs a and k to read as follows:

4A994 Computers, ''electronic assemblies'' and related equipment not controlled by 4A001 or 4A003, and specially designed ''parts'' and ''components'' therefor (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

Items:

* * * * *

a. Electronic computers and related equipment, and ''electronic assemblies'' and specially designed ''parts'' and ''components'' therefor, rated for operation at an ambient temperature above 343 K (70 °C);

* * * * *

k. ''Hybrid computers'' and ''electronic assemblies'' and specially designed ''parts'' and ''components'' therefor containing analog-to-digital converters having all of the following characteristics:

* * * * *

137. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by adding a Reporting Requirements section after the License Requirements section to read as follows:

4D001 ''Software'' as follows (see List of Items Controlled).

* * * * *

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

* * * * *

138. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D980 is amended by revising the heading to read as follows:

4D980 ''Software'' specially designed for the ''development,'' ''production'' or ''use'' of commodities controlled by 4A980.

* * * * *

139. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E980 is amended by revising the heading to read as follows:

4E980 ''Technology'' for the ''development,'' ''production'' or ''use'' of commodities controlled by 4A980.

* * * * *

140. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications is amended by revising the introductory text of Note 1, the N.B.2 and Note 2 that immediately follows the Category 5 Part 1—Telecommunications heading to read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND ''INFORMATION SECURITY''

Part I—TELECOMMUNICATIONS

Notes:

1. The control status of ''parts,'' ''components,'' test and ''production'' equipment, and ''software'' therefor which are specially designed for telecommunications equipment or systems is determined in Category 5, Part 1.

* * * * *

N.B.2.: See also Category 5, Part 2 for equipment, ''parts,'' ''components'' and ''software,'' performing or incorporating ''information security'' functions.

2. ''Digital computers,'' related equipment or ''software,'' when essential for the operation and support of telecommunications equipment described in this Category, are regarded as specially designed ''parts'' and ''components,'' provided they are the standard models customarily supplied by the manufacturer. This includes operation, administration, maintenance, engineering or billing computer systems.

* * * * *

141. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5A001 is amended:

a. By revising the heading;

b. By revising ''Unit'' paragraph in the List of Items Controlled section;

c. By revising ''Related Controls'' paragraph in the List of Items Controlled section; and

d. By revising the introductory text to ''items'' paragraph b, e, and f to read as follows:

5A001 Telecommunications systems, equipment, ''parts,'' ''components'' and accessories, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment or antennae in number; cable and fiber in meters/feet, ''parts,'' ''components'' and accessories in $ value

Related Controls: (1) Telecommunications equipment defined in 5A001.a.1 through 5A001.a.3 for use on board satellites is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) Direction finding equipment defined in 5A001.e is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (3) See also 5A101 and 5A991.

* * * * *

Items:

* * * * *

b. Telecommunication systems and equipment, and specially designed ''parts,'' ''components'' and accessories therefor, having any of the following characteristics, functions or features:

* * * * *

e. Radio direction finding equipment operating at frequencies above 30 MHz and

having all of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

f. Jamming equipment specially designed or modified to intentionally and selectively interfere with, deny, inhibit, degrade or seduce mobile telecommunication services and perform any of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

142. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5A980 is amended by revising the heading to read as follows:

5A980 Devices primarily useful for the surreptitious interception of wire, oral, or electronic communications, other than those controlled under 5A001.i; and ''parts,'' ''components'' and accessories therefor.

* * * * *

143. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section;

c. By revising the introductory text to ''items'' paragraphs b and c in the List of Items Controlled section; and

d. By revising ''items'' paragraph c.1, f, g, and h in the List of Items Controlled section to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001 (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Telecommunication equipment defined in 5A991 for use on board satellites is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 5E101 and 5E991.

* * * * *

Items:

* * * * *

b. Telecommunication transmission equipment and systems, and specially designed ''parts,'' ''components'' and accessories therefor, having any of the following characteristics, functions or features:

* * * * *

c. ''Stored program controlled'' switching equipment and related signaling systems, having any of the following characteristics, functions or features, and specially designed ''parts,'' ''components'' and accessories therefor:

Note: * * *

c.1. ''Data (message) switching'' equipment or systems designed for ''packet-mode operation'' and ''parts,'' electronic assemblies and ''components'' therefor, n.e.s.

* * * * *

f. Phased array antennas, operating above 10.5 GHz, containing active elements and distributed ''parts'' or ''components,'' and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and ''parts,'' electronic assemblies and ''components'' therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and ''parts'' and ''components'' therefor, n.e.s.

144. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5B001 is amended:

a. By revising the heading;

b. By revising the Special Conditions for License Exception STA paragraph section;

c. By revising ''Unit'' paragraph in the List of Items Controlled section; and

d. By revising the introductory text to ''items'' paragraph a and b to read as follows:

5B001 Telecommunication test, inspection and production equipment, ''parts,'' ''components'' and accessories, as follows (See List of Items Controlled).

* * * * *

Special Conditions for License Exception STA

License Exception STA may not be used to ship 5B001.a equipment and specially designed ''parts,'' ''components'' or accessories therefor, specially designed for the ''development,'' ''production'' or ''use'' of equipment, functions or features specified by in ECCN 5A001.b.3, .b.5 or .h to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

Items:

a. Equipment and specially designed ''parts,'' ''components'' or accessories therefor, specially designed for the ''development,'' ''production'' or ''use'' of equipment, functions or features, controlled by 5A001.

* * * * *

b. Equipment and specially designed ''parts,'' ''components'' or accessories therefor, specially designed for the ''development'' of any of the following telecommunication transmission or switching equipment:

* * * * *

145. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5D001 is amended by revising the License Exception TSR paragraph in the License Exceptions section to read as follows:

5D001 ''Software'' as follows (see List of Items Controlled).

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for exports and reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''software'' controlled by 5D001.a and specially designed for items controlled by 5A001.b.5 and 5A001.h.

* * * * *

146. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5D101 is amended by revising the heading to read as follows:

5D101 ''Software'' specially designed or modified for the ''use'' of equipment controlled by 5A101.

* * * * *

147. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5D991 is amended by revising the heading to read as follows:

5D991 ''Software'' specially designed or modified for the ''development,'' ''production'' or ''use'' of equipment controlled by 5A991 and 5B991, and dynamic adaptive routing software as described as follows (see List of Items Controlled).

* * * * *

148. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 1—Telecommunications, Export Control Classification Number (ECCN) 5E001 is amended:

a. By revising the introductory text of the License Exception TSR paragraph in the License Exceptions section;

b. By revising ''Related Controls'' paragraph in the List of Items Controlled section; and

c. By revising the introductory text to ''items'' paragraph e in the list of Items Controlled section to read as follows:

5E001 ''Technology'' as follows (see List of Items Controlled).

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for exports and reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''technology'' controlled by 5E001.a for the ''development'' or ''production'' of the following:

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) Technology defined in 5E001.b.1, 5E001.b.2, 5E001.b.4, or 5E001.c for use on board satellites is ''subject to ITAR'' (see 22 CFR parts 120 through 130). (2) See also 5E101, 5E980 and 5E991.

* * * * *

Items:

* * * * *

e. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of electronic devices and circuits, specially designed for telecommunications and containing ''parts'' or ''components'' manufactured from ''superconductive'' materials, specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

* * * * *

149. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 2—Telecommunications is amended by revising the ''Note'' 1 and ''Note'' 4 paragraph 2 that immediately follows the Category 5 Part II—''INFORMATION SECURITY'' heading to read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND ''INFORMATION SECURITY''

Part II—''INFORMATION SECURITY''

Note 1: The control status of ''information security'' equipment, ''software,'' systems, application specific ''electronic assemblies,'' modules, integrated circuits, ''parts,'' ''components'' or functions is determined in Category 5, part 2 even if they are ''parts,'' ''components'' or ''electronic assemblies'' of other equipment.

* * * * *

Note 4: * * *

* * * * *

2. A computer, including operating systems, ''parts'' and ''components'' therefor;

* * * * *

150. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 2—Information Security, Export Control Classification Number (ECCN) 5A002 is amended:

a. By revising the heading:

b. By revising the License Exception LVS paragraph in the License Exceptions section; and

c. By revising the introductory text to ''items'' paragraph a to read as follows:

5A002 ''Information security'' systems, equipment, ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

License Exceptions

LVS: Yes: $500 for ''parts'' and ''components''. N/A for systems and equipment.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. Systems, equipment, application specific ''electronic assemblies,'' modules and integrated circuits for ''information security,'' as follows, and ''parts'' and ''components'' therefor specially designed for ''information security'':

* * * * *

151. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 2—Information Security, Export Control Classification Number (ECCN) 5A992 is amended by revising ''items'' paragraph b to read as follows:

5A992 Equipment not controlled by 5A002.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. ''Information security'' equipment, n.e.s., (e.g., cryptographic, cryptanalytic, and cryptologic equipment, n.e.s.) and ''parts'' and ''components'' therefor.

* * * * *

152. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 2—Information Security, Export Control Classification Number (ECCN) 5D992 is amended by revising the heading to read as follows:

5D992 ''Information Security'' ''software'' not controlled by 5D002 as follows (see List of Items Controlled).

* * * * *

153. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security,'' Part 2—Information Security, Export Control Classification Number (ECCN) 5E992 is amended by revising the heading to read as follows:

5E992 ''Information Security'' ''technology'' according to the General Technology Note, not controlled by 5E002, as follows (see List of Items Controlled).

* * * * *

154. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A001 is amended:

a. By revising the heading: and

b. By revising the introductory text to ''items'' paragraph a, a.1, a.1.d, and a.2 and the ''Note'' to a.2.f to read as follows:

6A001 Acoustic systems, equipment, and ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. Marine acoustic systems, equipment and specially designed ''parts'' and ''components'' therefor, as follows:

a.1. Active (transmitting or transmitting and receiving) systems, equipment and specially designed ''parts'' and ''components'' therefor, as follows:

* * * * *

a.1.d. Acoustic systems and equipment, designed to determine the position of surface vessels or underwater vehicles and having all of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

a.2. Passive systems, equipment and specially designed ''parts'' and ''components'' therefor, as follows:

* * * * *

Note: 6A001.a.2 also applies to receiving equipment, whether or not related in normal application to separate active equipment, and specially designed ''parts'' and ''components'' therefor.

* * * * *

155. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A002 is amended:

a. By revising the heading;

b. By revising the Special Conditions for License Exception STA section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section; and

d. By revising the introductory text to ''items'' paragraphs a.2, a.2.c and d to read as follows:

6A002 Optical sensors and equipment, ''parts'' and ''components'' therefore, as follows (see List of Items Controlled).

* * * * *

Special Conditions for License Exception STA

License Exception STA may not be used to ship to any of the eight destinations listed in § 740.20(c)(2) of the EAR any commodity in: 6A002.a.1.a or .b.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The following commodities are ''subject to the ITAR'' (see 22 CFR parts 120 through 130): (a) ''Image intensifiers'' defined in 6A002.a.2 and ''focal plane arrays'' defined in 6A002.a.3 specially designed, modified, or configured for military use and not part of civil equipment; (b) ''Space qualified'' solid-state detectors defined in 6A002.a.1, ''space qualified'' imaging sensors (e.g., ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and ''space qualified'' cryocoolers defined in 6A002.d.1, unless, on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination indicating the commodity is subject to the EAR. (2) See also 6A102, 6A202, and 6A992.

Note: * * *

Related Definitions: N/A

Items:

* * * * *

a. * * *

a.2. Image intensifier tubes and specially designed ''parts'' and ''components'' therefor, as follows:

* * * * *

a.2.c. Specially designed ''parts'' and ''components,'' as follows:

* * * * *

d. Special support ''parts'' and ''components'' for optical sensors, as follows:

* * * * *

156. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A003 is amended:

a. By revising the heading:

b. By adding a Reporting Requirements section after the License Requirements section; and

c. By revising the introductory text to ''items'' paragraph a to read as follows:

6A003 Cameras, systems or equipment, ''parts'' and ''components'' therefore, as follows (see List of Items Controlled).

* * * * *

Reporting Requirements

See § 743.3 of the EAR for thermal camera reporting for exports that are not authorized by an individually validated license of thermal imaging cameras controlled by ECCN 6A003.b.4.b to Albania, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea Spain, Sweden, Switzerland, Turkey, or the United Kingdom, must be reported to BIS.

* * * * *

List of Items Controlled

* * * * *

Items:

a. Instrumentation cameras and specially designed ''parts'' and ''components'' therefor, as follows:

* * * * *

157. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A004 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section; and

c. By revising ''items'' paragraph a.1 in the List of Items Controlled section;

d. By revising the introductory text of paragraph b in the List of Items Controlled section;

e. By revising the introductory text of paragraph c in the List of Items Controlled section; and

f. By revising paragraphs c.1, c.4, and d.1 to read as follows:

6A004 Optical equipment, ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: ***

Related Controls: * * * (2) ''Space qualified'' ''parts'' and ''components'' for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1 are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). * * *

Related Definitions: * * *

Items:

* * * * *

a.1. ''Deformable mirrors'' having either continuous or multi element surfaces, and specially designed ''parts'' and ''components'' therefor, capable of dynamically repositioning portions of the surface of the mirror at rates exceeding 100 Hz;

* * * * *

b. Optical ''parts'' and ''components'' made from zinc selenide (ZnSe) or zinc sulphide (ZnS) with transmission in the wavelength range exceeding 3,000 nm but not exceeding 25,000 nm and having any of the following:

* * * * *

c. ''Space-qualified'' ''parts'' and ''components'' for optical systems, as follows:

c.1. ''Parts'' and ''components'' lightweighted to less than 20% ''equivalent density'' compared with a solid blank of the same aperture and thickness;

* * * * *

c.4. ''Parts'' and ''components'' manufactured from ''composite'' materials having a coefficient of linear thermal expansion equal to or less than 5×10^{-6} in any coordinate direction;

* * * * *

d.1. Equipment specially designed to maintain the surface figure or orientation of the ''space-qualified'' ''parts'' and ''components'' controlled by 6A004.c.1 or 6A004.c.3;

* * * * *

158. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A005 is amended:

a. By revising the heading;

b. By adding a heading Note;

c. By revising the ''Related Controls'' paragraph (6) in the List of Items Controlled section;

d. By revising the ''Note'' to ''items'' paragraph a.6.b; and

e. By revising ''items'' paragraphs e and f.3 to read as follows:

6A005 ''Lasers,'' ''parts,'' ''components'' and optical equipment, as follows (see List of Items Controlled).

HEADING NOTE: This entry does not control ''lasers'' or ''laser'' systems for the separation of uranium isotopes with a spectrum frequency stabilizer for operation over extended periods of time that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (6) Shared aperture optical elements, capable of operating in ''super-high power laser'' applications, and ''lasers'' specifically designed, modified, or configured for military application are ''subject to ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

* * * * *

a.6.b.2. * * *

Note: 6A005.a.6.b does not control multiple transverse mode, industrial ''lasers'' with output power exceeding 2kW and not exceeding 6 kW with a total mass greater than 1,200 kg. For the purpose of this note, total mass includes all ''parts'' and ''components'' required to operate the ''laser,'' e.g., ''laser,'' power supply, heat exchanger, but excludes external optics for beam conditioning and/or delivery.

* * * * *

e. ''Parts'' and ''components'' as follows:

e.1. Mirrors cooled either by 'active cooling' or by heat pipe cooling;

Technical Note: 'Active cooling' is a cooling technique for optical ''parts'' and ''components'' using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical ''part'' or ''component'' to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-

optical ''parts'' and ''components,'' specially designed for use with controlled ''lasers'';

* * * * *

f.3. Optical equipment, and ''parts'' and ''components,'' specially designed for a phased array ''SHPL'' system for coherent beam combination to an accuracy of λ/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

* * * * *

159. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A006 is amended by revising the heading to read as follows:

6A006 ''Magnetometers,'' ''magnetic gradiometers,'' ''intrinsic magnetic gradiometers,'' underwater electric field sensors, ''compensation systems'' as follows (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

160. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A008 is amended by revising the heading to read as follows:

6A008 Radar systems, equipment and assemblies, having any of the following (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

161. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A102 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6A102 Radiation hardened detectors, other than those controlled by 6A002, specially designed or modified for protecting against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects) and usable for ''missiles,'' designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5 × 10^5 rads (silicon).

* * * * *

List of Items Controlled

Unit: ''Parts'' and ''components'' in number

* * * * *

162. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A103 is amended by revising the heading to read as follows:

6A103 Radomes designed to withstand a combined thermal shock greater than 100 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa, usable in protecting ''missiles'' against nuclear effects (e.g., Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for ''missiles''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

* * * * *

163. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A107 is amended:

a. By revising the heading; and

b. By revising ''items'' paragraph b to read as follows:

6A107 Gravity meters (gravimeters) and specially designed ''parts'' and ''components'' for gravity meters and gravity gradiometers, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. Specially designed ''parts'' and ''components'' for gravity meters controlled in 6A007.b or 6A107.a and gravity gradiometers controlled in 6A007.c.

* * * * *

164. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A108 is amended by revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

6A108 Radar systems and tracking systems, other than those controlled by 6A008, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: *** (2) Items in 6A108.a that are specially designed or modified for ''missiles'' or for items on the U.S. Munitions List are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

165. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A203 is amended:

a. By revising the heading;

b. By revising the ''unit'' paragraph in the List of Items Controlled section; and

c. By revising the introductory text to ''items'' paragraph a and the Note to paragraph a to read as follows:

6A203 Cameras and ''parts'' and ''components,'' other than those controlled by 6A003, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment, ''parts'' and ''components'' in number

* * * * *

Items:

* * * * *

a. Mechanical rotating mirror cameras, as follows, and specially designed ''parts'' and ''components'' therefor:

* * * * *

Note: ''Parts'' and ''components'' of cameras controlled by 6A203.a include their synchronizing electronics units and rotor assemblies consisting of turbines, mirrors and bearings.

* * * * *

166. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A205 is amended by revising the heading to read as follows:

6A205 ''Lasers,'' ''laser'' amplifiers and oscillators, other than lasers used in plants for the separation of isotopes of ''natural uranium'' and ''depleted uranium,'' ''special fissile materials'' and ''other fissile materials,'' and specially designed or prepared equipment, ''parts'' and ''components'' therefor that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110) or 6A005, as follows (see List of Items Controlled).

* * * * *

167. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A225 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6A225 Velocity interferometers for measuring velocities exceeding 1 km/s during time intervals of less than 10 microseconds.

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

168. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A226 is amended by revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6A226 Pressure sensors, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

169. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A991 is amended by revising the heading to read as follows:

6A991 Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed ''parts'' and ''components,'' n.e.s.

* * * * *

170. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A992 is amended:

a. By revising the heading to read;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the introductory text to ''items'' paragraph a to read as follows:

6A992 Optical Sensors, not controlled by 6A002, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

Items:

* * * * *

a. Image intensifier tubes and specially designed ''parts'' and ''components'' therefor, as follows:

* * * * *

171. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A994 is amended:

a. By revising the heading; and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6A994 Optics, not controlled by 6A004, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

172. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A995 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Note'' following ''items'' paragraph e.2.b to read as follows:

6A995 ''Lasers'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

Items:

* * * * *

e.2.b. * * *

Note: 6A995.e.2.b does not control multiple transverse mode, industrial ''lasers'' with output power less than or equal to 2kW with a total mass greater than 1,200kg. For the purpose of this note, total mass includes all ''parts'' and ''components'' required to operate the ''laser,'' e.g., ''laser,'' power supply, heat exchanger, but excludes external optics for beam conditioning and/or delivery.

* * * * *

173. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A996 is amended:

a. By revising the heading; and

b. By revising the introductory text to ''Items'' paragraph b to read as follows:

6A996 ''Magnetometers'' not controlled by ECCN 6A006, ''Superconductive'' electromagnetic sensors as follows (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

Items:

* * * * *

b. ''Superconductive'' electromagnetic sensors, ''parts'' and ''components'' manufactured from ''superconductive'' materials:

* * * * *

174. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A997 is amended by revising the heading to read as follows:

6A997 Gravity meters (gravimeters) for ground use, n.e.s., as follows (see List of Items Controlled).

* * * * *

175. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A998 is amended:

a. By revising the heading; and

b. By revising ''items'' paragraph a to read as follows:

6A998 Radar systems, equipment and ''major components'' n.e.s., and specially designed ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. Airborne radar equipment, n.e.s., and specially designed ''parts'' and ''components'' therefor.

* * * * *

176. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6B008 is amended by revising the heading to read as follows:

6B008 Pulse radar cross section measurement systems having transmit pulse widths of 100 ns or less, and specially designed ''parts'' and ''components'' therefor.

* * * * *

177. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6– Sensors and Lasers, Export Control Classification Number (ECCN) 6B995 is amended:

a. By revising the heading, and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6B995 Specially designed or modified equipment (see List of Items Controlled), including tools, dies, fixtures or gauges, and other specially designed ''parts,'' ''components'' and accessories therefor as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

178. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6C992 is amended:

a. By revising the heading; and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6C992 Optical sensing fibers not controlled by 6A002.d.3 that are modified structurally to have a 'beat length' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by 'mole fraction.'

* * * * *

List of Items Controlled

Unit: Equipment in number

* * * * *

179. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6C994 is amended:

a. By revising the heading; and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

6C994 Optical materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; and accessories in $ value

* * * * *

180. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D001 is amended:

a. By revising the License Exception TSR paragraph (3) in the License Exceptions section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

6D001 ''Software'' specially designed for the ''development'' or ''production'' of equipment controlled by 6A004, 6A005, 6A008 or 6B008.

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for the following:

* * * * *

(3) Exports or reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''software'' specially designed for the ''development'' or ''production'' of equipment controlled by 6A004.c or d, 6A008.d, h, k or 6B008.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) ''Software'' specially designed for the ''development'' or ''production'' of ''space qualified'' ''parts'' and ''components'' for optical systems defined in 6A004.c and ''space qualified'' optical control equipment defined in 6A004.d.1 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 6D991, and ECCN 6E001 (''development'') for ''technology'' for items controlled under this entry.

* * * * *

181. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D002 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

6D002 ''Software'' specially designed for the ''use'' of equipment controlled by 6A002.b, 6A008 or 6B008.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) ''Software'' specially designed for the ''use'' of ''space qualified'' imaging sensors (e.g., ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130), unless, on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination indicating the ''software'' is subject to the EAR. (2) ''Software'' specially designed for the ''use'' of ''space qualified'' LIDAR equipment specially designed for surveying or for meteorological observation, released from control under the note in 6A008.j, is controlled in 6D991. (3) See also 6D102, 6D991, and 6D992.

* * * * *

182. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D003 is amended by revising the License Exception TSR paragraph in the License Exceptions section to read as follows:

6D003 Other ''software'' as follows (see List of Items Controlled).

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for exports or reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''software'' for items controlled by 6D003.a.

* * * * *

183. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D102 is amended by revising the heading to read as follows:

6D102 ''Software'' specially designed or modified for the ''use'' of equipment controlled by 6A108.

* * * * *

184. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D993 is amended by revising the heading to read as follows:

6D993 Other ''software,'' not controlled by 6D003, as follows (see List of Items Controlled).

* * * * *

185. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6D994 is removed.

186. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6E001 is amended:

a. By revising the License Exception TSR paragraph (4) introductory text in the License Exceptions section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

6E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment, materials or ''software'' controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for the following:

* * * * *

(4) Exports or reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''technology'' for the ''development'' of the following:

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) ''Technology'' according to the General Technology Note for the ''development'' of the following commodities is ''subject to the ITAR'' (see 22 CFR parts 120 through 130): ''Space qualified'' (a) ''Parts'' and ''components'' for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1.; (b) Solid-state detectors defined in 6A002.a.1, ''imaging sensors'' (e.g., ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and cryocoolers defined in 6A002.d.1 unless on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination indicating the ''technology'' is subject to the EAR. (2) See also 6E101, 6E201, and 6E991.

* * * * *

187. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6E002 is amended:

a. By revising the License Exception TSR paragraph (3) introductory text in the License Exceptions section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

6E002 ''Technology'' according to the General Technology Note for the

''production'' of equipment or materials controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for the following:

* * * * *

(3) Exports or reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''technology'' for the ''development'' of the following:

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) ''Technology'' according to the General Technology Note for the ''production'' of the following commodities is ''subject to the ITAR'' (see 22 CFR parts 120 through 130) when intended for use on a satellite: ''Space qualified'' (a) ''Parts'' and ''components'' for optical systems defined in 6A004.c and optical control equipment defined in 6A004.d.1; (b) Solid-state detectors defined in 6A002.a.1, ''imaging sensors'' (e.g., ''monospectral imaging sensors'' and ''multispectral imaging sensors'') defined in 6A002.b.2.b.1, and cryocoolers defined in 6A002.d.1 unless on or after September 23, 2002, the Department of State issues a commodity jurisdiction determination indicating the ''technology'' is subject to the EAR. (2) See also 6E992.

* * * * *

188. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6E993 is amended by revising the introductory text to ''items'' paragraph a to read as follows:

6E993 Other ''technology,'' not controlled by 6E003, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. Optical fabrication technologies for serially producing optical ''parts'' and ''components'' at a rate exceeding 10 m^2 of surface area per year on any single spindle and having all of the following:

* * * * *

189. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A001 is amended by revising the heading to read as follows:

7A001 Accelerometers as follows (see List of Items Controlled) and specially designed ''parts'' and ''components'' therefor.

* * * * *

190. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A002 is amended by revising the heading to read as follows:

7A002 Gyros or angular rate sensors, having any of the following (see List of Items Controlled) and specially designed ''parts'' and ''components'' therefor.

* * * * *

191. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A003 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section; and

c. By revising the introductory text to ''items'' paragraphs a and c to read as follows:

7A003 Inertial systems and specially designed ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 7A103 and 7A994. (2) Inertial Navigation Systems (INS) and inertial equipment, and specially designed ''parts'' and ''components'' therefor specifically designed, modified or configured for military use are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

a. Inertial Navigation Systems (INS) (gimballed or strapdown) and inertial equipment, designed for ''aircraft,'' land vehicles, vessels (surface or underwater) or ''spacecraft,'' for navigation, attitude, guidance or control and having any of the following and specially designed ''parts'' and ''components'' therefor:

* * * * *

c. Inertial measurement equipment for heading or True North determination and having any of the following, and specially designed ''parts'' and ''components'' therefor:

* * * * *

192. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A004 is amended:

a. By revising the heading; and

b. By revising the ''items'' paragraph b in the List of Items Controlled section to read as follows:

7A004 'Star trackers' and ''parts and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. ''Parts'' and ''components'' specially designed for equipment specified in 7A004.a as follows:

* * * * *

193. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A005 is amended:

a. By revising the heading;

b. By revising the License Requirements section;

c. By revising the ''Related Controls'' paragraph; and

d. By revising the ''Note'' to ''items'' paragraph b in the List of Items Controlled section to read as follows:

7A005 Global Navigation Satellite Systems (GNSS) receiving equipment having any of the following (see List of Items Controlled) and specially designed ''parts'' and ''components'' therefor.

* * * * *

License Requirements

These items are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

List of Items Controlled

* * * * *

Related Controls: (1) See also 7A105 and 7A994. Typically commercially available GPS do not employ decryption or adaptive antenna and are classified as 7A994. (2) For equipment specially designed for military use, see Categories XI and XV of the U.S. Munitions List (22 CFR 121).

* * * * *

Items:

* * * * *

b. * * *

Note: 7A005.b does not apply to GNSS receiving equipment that only uses ''parts'' and ''components'' designed to filter, switch, or combine signals from multiple omni-directional antennae that do not implement adaptive antenna techniques.

* * * * *

194. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A008 is amended by revising the heading to read as follows:

7A008 Underwater sonar navigation systems using Doppler velocity or correlation velocity logs integrated with a heading source and having a positioning accuracy of equal to or less (better) than 3% of distance traveled ''Circular Error Probable'' (''CEP'') and

specially designed ''parts'' and ''components'' therefor.

* * * * *

195. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A101 is amended:

a. By revising the heading; and

b. By revising the introductory text to ''items'' paragraph a to read as follows:

7A101 Accelerometers, other than those controlled by 7A001 (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

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Items:

a. Linear accelerometers designed for use in inertial navigation systems or in guidance systems of all types, usable in ''missiles'' having all of the following characteristics, and specially designed ''parts'' and ''components'' therefor:

* * * * *

196. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A102 is amended by revising the heading to read as follows:

7A102 Gyros, other than those controlled by 7A002 (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

197. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A103 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section; and

c. By revising ''items'' paragraph a and b and the introductory text to the ''Technical Note'' paragraph at the end of the ''items'' paragraph in the List of Items Controlled section to read as follows:

7A103 Instrumentation, navigation equipment and systems, other than those controlled by 7A003, and specially designed ''parts'' and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See ECCN 7A003 and 7A994. (2) For rockets, missiles, or unmanned aerial vehicles controlled under the U.S. Munitions List (USML), items described in 7A103.b are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (3) Inertial navigation systems and inertial equipment, and specially designed ''parts'' and ''components'' therefor specifically designed, modified or configured for military use are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

* * * * *

a. Inertial or other equipment using accelerometers or gyros controlled by 7A001, 7A002, 7A101 or 7A102 and systems incorporating such equipment, and specially designed ''parts'' and ''components'' therefor;

b. Integrated flight instrument systems, which include gyrostabilizers or automatic pilots, designed or modified for use in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, and specially designed ''parts'' and ''components'' therefor.

c. * * *

Technical Note: An 'integrated navigation system' typically incorporates the following ''parts'' and ''components'':

* * * * *

198. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A104 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

7A104 Gyro-astro compasses and other devices, other than those controlled by 7A004, which derive position or orientation by means of automatically tracking celestial bodies or satellites and specially designed ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

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Related Controls: This entry controls specially designed ''parts'' and ''components'' for gyro-astro compasses and other devices controlled by 7A004.

* * * * *

199. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A105 is amended by revising the heading to read as follows:

7A105 Receiving equipment for Global Navigation Satellite Systems (GNSS) (e.g. GPS, GLONASS, or Galileo) having any of the following characteristics, and specially designed ''parts'' and ''components'' therefor. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

200. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A106 is amended by revising the heading to read as follows:

7A106 Altimeters, other than those controlled by 7A006, of radar or laser radar type, designed or modified for use in ''missiles''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

201. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A107 is amended by revising the heading to read as follows:

7A107 Three axis magnetic heading sensors having all of the following characteristics (see List of Items Controlled), and specially designed ''parts'' and ''components'' therefor.

* * * * *

202. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A115 is amended by revising the heading to read as follows:

7A115 Passive sensors for determining bearing to specific electromagnetic sources (direction finding equipment) or terrain characteristics, designed or modified for use in ''missiles''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

203. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A116 is amended by revising the heading to read as follows:

7A116 Flight control systems (hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire systems) and attitude control equipment) designed or modified for ''missiles''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

204. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A117 is amended by revising the heading to read as follows:

7A117 ''Guidance sets'' capable of achieving system accuracy of 3.33% or less of the range (e.g., a ''CEP'' of 10 km or less at a ''range'' of 300 km). (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

205. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7A994 is amended:

a. By redesignating the introductory text of the License Requirement Note in the License Requirements section as License Requirement Note 1;

b. By adding a License Requirement Note 2 in the License Requirements section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including ''parts'' and ''components,'' n.e.s.

License Requirements

* * * * *

License Requirement Notes

* * *

(2) Typically commercially available GPS do not employ decryption or adaptive antenna and are classified as 7A994.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 7A005 and 7A105. (2) QRS11 Micromachined Angular Rate Sensors are ''subject to the ITAR'' (see 22 CFR parts 120 through 130), unless the QRS11–00100–100/101 is integrated into and included as an integral ''component'' of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such systems, or is exported solely for integration into such a system; or the QRS11–00050–443/569 is integrated into an automatic flight control system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such systems, or are exported solely for integration into such a system. (See Commodity Jurisdiction requirements in 22 CFR Parts 121; Category VIII(e), Note(1).) In the latter case, such items are subject to the EAR. Technology specific to the development and production of QRS11 sensors remains ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

206. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7B003 is amended by revising the ''Related Controls'' paragraph (1) in the List of Items Controlled section to read as follows:

7B003 Equipment specially designed for the ''production'' of equipment controlled by 7A (except 7A994).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See also 7B103, (this entry is ''subject to the ITAR'' (see 22 CFR parts 120 through 130)) and 7B994.

* * * * *

207. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7B103 is amended by revising the heading to read as follows:

7B103 Specially designed ''production facilities'' for equipment controlled by 7A117. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

208. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D001 is amended:

a. By revising the ''RS'' paragraph in the License Requirements section; and

b. By revising the ''Related Controls'' paragraphs (2) and (3) in the List of Items Controlled section to read as follows:

7D001 ''Software'' specially designed or modified for the ''development'' or ''production'' of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * * * *	
RS applies to ''software'' for inertial navigation systems, inertial equipment, and specially designed ''parts'' and ''components'' therefor, for ''civil aircraft''.	RS Column 1.
* * * * *	

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (2) The ''software'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, or 7B103 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (3) ''Software'' for inertial navigation systems and inertial equipment, and specially designed ''parts'' or ''components'' therefor, not for use on civil aircraft is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

209. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D003 is amended by adding a Reporting Requirements section after the License Requirements section to read as follows:

7D003 Other ''software'' as follows (see List of Items Controlled).

* * * * *

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

* * * * *

210. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D101 is amended:

a. By revising the MT paragraph in the Control(s) paragraph of the License Requirements section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

7D101 ''Software'' specially designed or modified for the ''use'' of equipment controlled by 7A001 to 7A006, 7A101 to 7A107, 7A115, 7A116, 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, or 7B103.

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
MT applies to ''software'' for commodities controlled for MT reasons.	MT Column 1.
* * * * *	

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) The ''software'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, or 7B103 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) ''Software'' for inertial navigation systems and inertial equipment, and specially designed ''parts'' and ''components'' therefor, not designed for use on civil aircraft by civil aviation authorities of a country listed in Country Group A:1 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

211. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D102 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

7D102 Integration ''software,'' as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: The ''software'' related to 7A003.b or 7A103.b is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

212. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7D103 is amended by revising the heading to read as follows:

7D103 ''Software'' specially designed for modelling or simulation of the ''guidance sets'' controlled by 7A117 or for their design integration with ''missiles''. (This entry is ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

213. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E001 is amended:

a. By revising the RS paragraph in the License Requirements section;

b. By adding a Reporting Requirements section after the License Requirements section; and

c. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

7E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software,'' controlled by 7A (except 7A994), 7B (except 7B994) or 7D (except 7D994).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * * * *	
RS applies to ''technology'' for inertial navigation systems, inertial equipment, and specially designed ''parts'' and ''components'' therefor, for ''civil aircraft.''.	RS Column 1
* * * * *	

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

List of Items Controlled

* * * * *

Related Controls: * * * (2) The ''technology'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software in 7D101 specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

214. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E002 is amended:

a. By revising the RS paragraph in the License Requirements section;

b. By adding a Reporting Requirements section after the License Requirements section; and

c. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

7E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 7A (except 7A994) or 7B (except 7B994).

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * * * *	
RS applies to ''technology'' for inertial navigation systems, inertial equipment, and specially designed ''parts'' and ''components'' therefor, for ''civil aircraft.''.	RS Column 1
* * * * *	

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

* * * * *

List of Items Controlled

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Related Controls: * * * (2) The ''technology'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, or 7B103 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

215. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E101 is amended:

a. By revising the RS paragraph in the License Requirements section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

7E101 ''Technology,'' according to the General Technology Note for the ''use'' of equipment controlled by 7A001 to 7A006, 7A101 to 7A107, 7A115 to 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103, or 7D101 to 7D103.

License Requirements

Reason for Control: * * *

Control(s)	*Country chart*
* * * * *	
RS applies to ''technology'' for inertial navigation systems, inertial equipment, and specially designed ''parts'' and ''components'' therefor, for ''civil aircraft.''.	RS Column 1
* * * * *	

* * * * *

List of Items Controlled

* * * * *

Related Controls: The ''technology'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

216. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E104 is amended by revising the heading to read as follows:

7E104 Design ''Technology'' for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for rockets or missiles capable of achieving a ''range'' equal to or greater than 300km, for optimization of rocket system trajectory. (This entry is ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

217. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, Export Control Classification Number (ECCN) 7E994 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

7E994 ''Technology,'' n.e.s., for the ''development,'' ''production'' or ''use'' of navigation, airborne communication, and other avionics equipment.

* * * * *

List of Items Controlled

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Related Controls: Technology specific to the development and production of QRS11 sensors remains ''subject to the ITAR'' (see 22 CFR parts 120 through 130) and (see ECCN 7A994, Related Controls).

* * * * *

218. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A002 is amended:

a. By revising the heading:

b. By revising the ''Unit'' paragraph in the List of Items Controlled section;

c. By revising the introductory text to ''Items'' paragraph (a);

d. By revising ''items'' paragraphs a.4, o.1.e, and o.2.d to read as follows:

8A002 Marine systems, equipment, ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Systems and equipment in number, ''parts'' and ''components'' in $ value

* * * * *

Items:

a. Systems, equipment, ''parts'' and ''components,'' specially designed or modified for submersible vehicles and designed to operate at depths exceeding 1,000 m, as follows:

* * * * *

a.4. ''Parts'' and ''components'' manufactured from material specified by ECCN 8C001;

* * * * *

o.1.e. Power transmission shaft systems incorporating ''composite'' material ''parts'' or ''components'' and capable of transmitting more than 1 MW;

* * * * *

o.2.d. Power transmission shaft systems incorporating ''composite'' material ''parts'' or ''components'' and capable of transmitting more than 2 MW;

* * * * *

219. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A918 is removed.

220. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A992 is amended:

a. By revising the heading;

b. By revising the License Requirements section;

c. By revising ''items'' paragraphs f and g; and

c. By adding paragraphs l and m to the ''items'' paragraph in the ''List of Items Controlled'' section to read as follows:

8A992 Vessels, marine systems or equipment, not controlled by 8A001, 8A002 or 8A018, and specially designed ''parts,'' and ''components'' therefor, and marine boilers and ''parts'' and ''components,'' accessories, and attachments therefor (see List of Items Controlled).

License Requirements

Reason for Control: AT, UN

Control(s)	*Country chart*
AT applies to entire entry.	AT Column 1
UN applies to 8A992.l and m.	See § 746.1(b) for UN controls

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

f. Vessels, n.e.s., including inflatable boats, and specially designed ''parts'' and ''components'' therefor, n.e.s.;

g. Marine engines (both inboard and outboard) and submarine engines, n.e.s.; and specially designed ''parts'' and ''components'' therefor, n.e.s.;

* * * * *

l. Marine boilers designed to have any of the following characteristics:

l.1. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; *or*

l.2. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.

m. Major components, accessories, and attachments for marine boilers described in 8A992.l.

221. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8D001 is amended by revising the License Exception TSR paragraph in the License Exceptions section to read as follows:

8D001 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or materials, controlled by 8A (except 8A018 or 8A992), 8B or 8C.

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for exports or reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''software'' specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b.

* * * * *

222. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8E001 is amended by revising the License Exception TSR paragraph in the License Exceptions section, to read as follows:

8E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials, controlled by 8A (except 8A018 or 8A992), 8B or 8C.

* * * * *

License Exceptions

* * * * *

TSR: Yes, except for exports or reexports to destinations outside of those 36 countries listed in § 740.20(c)(1) (License Exception STA) of ''software'' specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b.

* * * * *

223. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A002 is amended by revising the heading to read as follows:

9A002 'Marine gas turbine engines' with an ISO standard continuous power rating of 24,245 kW or more and a specific fuel consumption not exceeding 0.219 kg/kWh in the power range from 35 to 100%, and specially designed assemblies, ''parts'' and ''components'' therefor.

* * * * *

224. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A003 is amended by revising the heading to read as follows:

9A003 Specially designed assemblies, ''parts'' and ''components,'' incorporating any of the ''technologies'' controlled by 9E003.a, 9E003.h or 9E003.i, for any of the following gas turbine engine propulsion systems (see List of Items Controlled).

* * * * *

225. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A004 is amended by revising the ''Related Controls'' paragraphs (2), (4), (5) and (6) in the List of Items Controlled section to read as follows:

9A004 Space launch vehicles and ''spacecraft''.

* * * * *

List of Items Controlled

* * * * *

Related Controls:

* * * * *

(2) Space launch vehicles are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

(4) All other ''spacecraft'' not controlled under 9A004 and their payloads, and specifically designed or modified ''parts,'' ''components,'' accessories, attachments, and associated equipment, including ground support equipment, are ''subject to the ITAR'' (see 22 CFR parts 120 through 130), unless otherwise transferred to the Department of Commerce via a commodity jurisdiction determination by the Department of State.

(5) Exporters requesting a license from the Department of Commerce for ''spacecraft''

and their associated ''parts'' and ''components,'' other than the international space station, must provide a statement from the Department of State, Directorate of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce. All specially designed or modified ''parts,'' ''components,'' accessories, attachments, and associated equipment for ''spacecraft'' that have been determined by the Department of State through the commodity jurisdiction process to be under the licensing jurisdiction of the Department of Commerce, and that are not controlled by any other ECCN on the Commerce Control List, will be assigned a classification under this ECCN 9A004.

(6) Technical data required for the detailed design, development, manufacturing, or production of the international space station (to include specifically designed ''parts'' and ''components'') remains ''subject to the ITAR'' (see 22 CFR parts 120 through 130). This control by the ITAR of detailed design, development, manufacturing or production technology for NASA's international space station does not include that level of technical data necessary and reasonable for assurance that a U.S.-built item intended to operate on NASA's international space station has been designed, manufactured, and tested in conformance with specified requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations). All technical data and all defense services, including all technical assistance, for launch of the international space station, including launch vehicle compatibility, integration, or processing data, are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

226. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A005 is amended by revising the heading to read as follows:

9A005 Liquid rocket propulsion systems containing any of the systems, ''parts'' or ''components,'' controlled by 9A006. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

227. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A006 is amended by revising the heading to read as follows:

9A006 Systems, ''parts'' and ''components,'' specially designed for liquid rocket propulsion systems. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

228. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A007 is amended by revising the heading to read as follows:

9A007 Solid rocket propulsion systems. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

229. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A008 is amended by revising the heading to read as follows:

9A008 ''Parts'' and ''components'' specially designed for solid rocket propulsion systems. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

230. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A009 is amended by revising the heading to read as follows:

9A009 Hybrid rocket propulsion systems. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

231. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A010 is amended by revising the heading to read as follows:

9A010 Specially designed ''parts,'' ''components,'' systems and structures, for launch vehicles, launch vehicle propulsion systems or ''spacecraft''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

232. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A011 is amended by revising the heading to read as follows:

9A011 Ramjet, scramjet or combined cycle engines, and specially designed ''parts'' and ''components'' therefor. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

233. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A012 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section;

c. By revising the introductory text to ''items'' paragraph b; and

d. By revising paragraph b.3 to read as follows:

9A012 Non-military ''unmanned aerial vehicles,'' (''UAVs''), associated ''airships,'' associated systems, equipment, ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components'' and accessories in $ value

* * * * *

Items:

* * * * *

b. Associated systems, equipment, and ''parts'' and ''components,'' as follows:

* * * * *

b.3. Equipment, ''parts'' and ''components'' specially designed to convert a manned ''aircraft'' or a manned ''airship'' to a ''UAV'' controlled by 9A012.a;

* * * * *

234. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A101 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9A101 Turbojet and turbofan engines, other than those controlled by 9A001, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: 9A101.b controls only engines for non-military unmanned air vehicles [UAVs] or remotely piloted vehicles [RPVs], and does not control other engines designed or modified for use in ''missiles,'' which are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

235. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A103 is amended by revising the heading to read as follows:

9A103 Liquid propellant tanks specially designed for the propellants controlled in ECCNs 1C011, 1C111 or other liquid propellants used in ''missiles.'' (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

236. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A104 is amended by revising the heading to read as follows:

9A104 Sounding rockets, capable of a range of at least 300 km. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

237. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A105 is amended by revising the heading to read as follows:

9A105 Liquid propellant rocket engines. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

238. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export

Control Classification Number (ECCN) 9A106 is amended:

a. By revising the heading;

b. By revising the ''Unit'' in the List of Items Controlled section;

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section; and

d. By revising the introductory text to ''items'' paragraph d to read as follows:

9A106 Systems, ''parts'' or ''components,'' other than those controlled by 9A006, usable in ''missiles,'' and specially designed for liquid rocket propulsion systems, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment, ''parts'' and ''components'' in number

Related Controls: Items described in 9A106.a, .b, and .c are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

* * * * *

d. Liquid and slurry propellant (including oxidizers) control systems, and specially designed ''parts'' and ''components'' therefor, designed or modified to operate in vibration environments greater than 10 g rms between 20 Hz and 2000 Hz.

* * * * *

239. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A107 is amended by revising the heading to read as follows:

9A107 Solid propellant rocket motors, usable in rockets with a range capability of 300 Km or greater, other than those controlled by 9A007, having total impulse capacity equal to or greater than 8.41×10^5 Ns, but less than 1.1×10^6 Ns. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

240. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A108 is amended by revising the heading to read as follows:

9A108 Solid rocket propulsion ''parts'' and ''components,'' other than those controlled by 9A008, usable in rockets with a range capability of 300 Km or greater. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

241. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A109 is amended by revising the heading to read as follows:

9A109 Hybrid rocket motors, usable in rockets with a range capability of 300 Km or greater, other than those controlled by 9A009, and specially designed ''parts'' and ''components'' therefor. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

242. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A110 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

9A110 Composite structures, laminates and manufactures thereof, other than those controlled by entry 9A010, specially designed for use in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km or the subsystems controlled by entries 9A005, 9A007, 9A105.a, 9A106 to 9A109, 9A116, or 9A119.

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (2) ''Composite structures, laminates, and manufactures thereof, specially designed for use in missile systems are ''subject to the ITAR'' (see 22 CFR parts 120 through 130), except those specially designed for non-military unmanned air vehicles controlled in 9A012.

* * * * *

243. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A111 is amended by revising the heading to read as follows:

9A111 Pulse jet engines, usable in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300km, and specially designed ''parts'' and ''components'' therefor. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

244. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A115 is amended by revising the heading to read as follows:

9A115 Apparatus, devices and vehicles, designed or modified for the transport, handling, control, activation and launching of rockets, missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

245. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A116 is amended by revising the heading to read as follows:

9A116 Reentry vehicles, usable in ''missiles,'' and equipment designed or modified therefor. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

246. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A117 is amended by revising the heading to read as follows:

9A117 Staging mechanisms, separation mechanisms, and interstages therefor, usable in ''missiles''. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

247. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A118 is amended by revising the heading to read as follows:

9A118 Devices to regulate combustion usable in engines which are usable in rockets, missiles, and unmanned aerial vehicles capable of achieving a ''range'' equal of 300 Km or greater than 300 Km, controlled by 9A011 or 9A111. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

248. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A119 is amended by revising the heading to read as follows:

9A119 Individual rocket stages, usable in rockets with a range capability greater than 300 Km or greater, other than those controlled by 9A005, 9A007, 9A009, 9A105, 9A107 and 9A109. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

249. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A120 is amended:

a. By revising the heading;

b. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Related Controls'' paragraph to read as follows:

9A120 Complete unmanned aerial vehicles, not specified in 9A012, having all of the following characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

Related Controls: See ECCN 9A012 or the U.S. Munitions List Category VIII (22 CFR part 121). Also see ECCN 2B352.h for controls on certain spraying or fogging systems, and ''parts'' and ''components''

therefor, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs.''

* * * * *

250. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A980 is amended:

a. By revising the heading; and

b. By adding a heading Note to read as follows:

9A980 Nonmilitary mobile crime science laboratories; and accessories, n.e.s.

Heading Note: In order for a vehicle to be classified as a nonmilitary mobile crime scene laboratory under ECCN 9A980, the vehicle must contain one or more analytical or laboratory items controlled for Crime Control (CC) reasons on the CCL, such as ECCNs 3A980 and 3A981.

* * * * *

251. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A990 is amended:

a. By revising the heading; and

b. By revising ''items'' paragraphs b and c to read as follows:

9A990 Diesel engines, n.e.s., and tractors and specially designed ''parts'' and ''components'' therefor, n.e.s. (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

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b. Off highway wheel tractors of carriage capacity 9 mt (20,000 lbs) or more; and ''major components'' and accessories, n.e.s.

c. On-Highway tractors, with single or tandem rear axles rated for 9 mt per axel (20,000 lbs.) or greater and specially designed ''major components''.

* * * * *

252. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A991 is amended:

a. By revising the heading;

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section; and

c. By revising ''items'' paragraphs c, d, and e in the List of Items Controlled section to read as follows:

9A991 ''Aircraft,'' n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and ''parts'' and ''components,'' n.e.s. (see List of Items Controlled).

* * * * *

List of Items Controlled

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Related Controls: QRS11 Micromachined Angular Rate Sensors are ''subject to the ITAR'' (see 22 CFR parts 120 through 130), unless the QRS11–00100–100/101 is integrated into and included as an integral ''component'' of a commercial primary or standby instrument system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such a system, or is exported solely for integration into such a system; or the QRS11–00050–443/569 is integrated into an automatic flight control system of the type described in ECCN 7A994, or aircraft of the type described in ECCN 9A991 that incorporates such a system, or are exported solely for integration into such a system. (See Commodity Jurisdiction requirements in 22 CFR Part 121; Category VIII(e), Note(1)) In the latter case, such items are subject to the EAR. Technology specific to the development and production of QRS11 sensors remains ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Items:

* * * * *

c. Aero gas turbine engines, and ''parts'' and ''components'' specially designed therefor.

* * * * *

d. ''Parts'' and ''components'' specially designed for ''aircraft'' subject to the controls of ECCN 9A991.a or .b., n.e.s.

e. Pressurized aircraft breathing equipment, n.e.s.; *and* ''parts'' and ''components'' specially designed therefor, n.e.s.

253. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9– Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B001 is amended:

a. By revising the ''Unit'' paragraph in the List of Items Controlled section; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9B001 Equipment, tooling and fixtures, specially designed for manufacturing gas turbine blades, vanes or ''tip shroud'' castings, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value

Related Controls: For specially designed production equipment of systems, sub-systems, ''parts'' and ''components'' controlled by 9A005 to 9A009, 9A011, 9A101, 9A105 to *9A109,* 9A111, and 9A116 to 9A119 usable in ''missiles'' see 9B115. See also 9B991.

* * * * *

254. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9– Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B002 is amended:

a. By revising the heading; and

b. By revising ''items'' paragraph a in the List of Items Controlled section to read as follows:

9B002 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, having all of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

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Items:

a. Specially designed for the ''development'' of gas turbine engines, assemblies, ''parts'' or ''components''; and

* * * * *

255. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B003 is amended by revising the heading to read as follows:

9B003 Equipment specially designed for the ''production'' or test of gas turbine brush seals designed to operate at tip speeds exceeding 335 m/s, and temperatures in excess of 773 K (500°C), and specially designed ''parts,'' ''components'' or accessories therefor.

* * * * *

256. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9– Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B009 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9B009 Tooling specially designed for producing turbine engine powder metallurgy rotor ''parts'' and ''components'' capable of operating at stress levels of 60% of Ultimate Tensile Strength (UTS) or more and metal temperatures of 873 K (600°C) or more.

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List of Items Controlled

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Related Controls: See ECCN 9B002.

* * * * *

257. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9– Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B010 is amended:

a. By revising the heading; and

b. By revising the ''Unit'' paragraph in the List of Items Controlled section to read as follows:

9B010 Equipment specially designed for the production of ''UAVs'' and associated systems, equipment, ''parts'' and ''components,'' controlled by 9A012.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

* * * * *

258. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B115 is amended:

a. By revising heading;

b. By revising ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9B115 Specially designed ''production equipment'' for the systems, sub-systems, ''parts'' and ''components'' controlled by 9A004 to 9A009, 9A011, 9A101, 9A103 to 9A109, 9A111, 9A116 to 9A119.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109; 9A111, 9A116 to 9A119 are ''subject to the ITAR'' (see 22 CFR parts 120 through 130), the ''production equipment'' controlled in this entry that is related to these items is subject to the EAR.

* * * * *

259. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B116 is amended:

a. By revising heading;

b. By revising ''Unit'' paragraph in the List of Items Controlled section; and

c. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9B116 Specially designed ''production facilities'' for the systems, sub-systems, ''parts'' and ''components'' controlled by 9A004 to 9A009, 9A011, 9A012, 9A101, 9A103 to 9A109, 9A111, 9A116 to 9A119.

* * * * *

List of Items Controlled

Unit: Equipment in number; ''parts'' and ''components'' in $ value

Related Controls: Although items described in ECCNs 9A004 to 9A009, 9A011, 9A101, 9A104 to 9A109; 9A111, 9A116 to 9A119 are ''subject to the ITAR'' (see 22 CFR parts 120 through 130), the ''production equipment'' controlled in this entry that is related to these items is subject to the EAR.

* * * * *

260. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9— Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B990 is amended by revising the heading to read as follows:

9B990 Vibration test equipment and specially designed ''parts'' and ''components,'' n.e.s.

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261. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B991 is amended by revising the heading to read as follows:

9B991 Specially designed equipment, tooling or fixtures, not controlled by 9B001, as described in the List of Items Controlled, for manufacturing or measuring gas turbine blades, vanes or tip shroud castings as follows (see List of Items Controlled).

* * * * *

262. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D001 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9D001 ''Software'' specially designed or modified for the ''development'' of equipment or ''technology,'' controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

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List of Items Controlled

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Related Controls: (1) ''Software'' ''required'' for the ''development'' of items controlled by 9A004 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) ''Software'' ''required'' for the ''development'' of equipment or ''technology'' ''subject to the ITAR'' is also ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

263. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D002 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9D002 ''Software'' specially designed or modified for the ''production'' of equipment controlled by 9A (except 9A018, 9A990, or 9A991) or 9B (except 9B990 or 9B991).

* * * * *

List of Items Controlled

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Related Controls: (1) ''Software'' ''required'' for the ''production'' of items controlled by 9A004 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) ''Software'' ''required'' for the ''production'' of equipment or ''technology'' ''subject to the ITAR'' is also ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

264. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D003 is amended by revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

9D003 ''Software'' incorporating ''technology'' specified by 9E003.h and used in ''FADEC Systems'' for propulsion systems controlled by 9A (except 9A018, 9A990 or 9A991) or equipment controlled by 9B (except 9B990 or 9B991).

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List of Items Controlled

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Related Controls: * * * (2) ''Software'' ''required'' for the ''use'' of equipment or ''technology'' ''subject to the ITAR'' is also ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

265. In Supplement No. 9 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D004 is amended by revising ''items'' paragraphs b and e to read as follows:

9D004 Other ''software'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. ''Software'' for testing aero gas turbine engines, assemblies, ''parts'' or ''components,'' specially designed to collect, reduce and analyze data in real time and capable of feedback control, including the dynamic adjustment of test articles or test conditions, as the test is in progress;

* * * * *

e. ''Software'' specially designed or modified for the operation of ''UAVs'' and associated systems, equipment, ''parts'' and ''components,'' controlled by 9A012;

* * * * *

266. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D103 is amended by revising the heading to read as follows:

9D103 ''Software'' specially designed for modelling, simulation or design integration of ''missiles,'' or the subsystems controlled by 9A005, 9A007, 9A009, 9A105, 9A106, 9A107, 9A108, 9A109, 9A116 or 9A119. (This entry is ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

267. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export

Control Classification Number (ECCN) 9D104 is amended:

a. By revising the heading; and

b. By revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9D104 ''Software'' specially designed or modified for the ''use'' of equipment controlled by 9A001, 9A005, 9A006, 9A007, 9A008, 9A009, 9A010, 9A011, 9A012 (for MT controlled items only), 9A101, 9A105, 9A106.c, .d and .e, 9A107, 9A108, 9A109, 9A111, 9A115, 9A116, 9A117, or 9A118.

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List of Items Controlled

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Related Controls: ''Software'' for commodities controlled by 9A005 to 9A011, 9A105, 9A106.c, 9A107 to 9A109, 9A111, 9A115, 9A116, 9A117, and 9A118 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

268. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9D105 is amended by revising the heading to read as follows:

9D105 ''Software'' that coordinates the function of more than one subsystem, specially designed or modified for ''use'' in rockets, missiles, or unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km. (These items are ''subject to the ITAR.'' See 22 CFR parts 120 through 130.)

269. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E001 is amended by revising the ''Related Controls'' paragraphs (2) and (3) in the List of Items Controlled section to read as follows:

9E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software,'' controlled by 9A001.b, 9A004 to 9A012, 9B (except 9B990 or 9B991), or 9D (except 9D990 or 9D991).

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List of Items Controlled

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Related Controls: * * * (2) The ''technology'' required for the ''development'' of equipment controlled by 9A004 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (3) ''Technology,'' required for the ''development'' of equipment or ''software'' ''subject to the ITAR,'' is also ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

270. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E002 is amended by revising the ''Related Controls'' paragraphs (3) and (4) in the List of Items Controlled section to read as follows:

9E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 9A001.b, 9A004 to 9A011 or 9B (except 9B990 or 9B991).

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List of Items Controlled

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Related Controls: * * * (3) The ''technology'' required for the ''development'' of equipment controlled by 9A004 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (4) ''Technology,'' required for the ''development'' of equipment or ''software'' ''subject to the ITAR,'' is also ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

271. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E003 is amended:

a. By revising the ''Related Controls'' paragraph in the List of Items Controlled section;

b. By revising the introductory text of ''items'' paragraphs a and a.3 in the List of Items Controlled section;

c. By revising ''items'' paragraphs a.4, a.7, a.8, and the ''Technical Note'' to paragraph a.8 in the List of Items Controlled section;

d. By revising the introductory text of ''items'' paragraph (c) in the List of Items Controlled section; and

e. By revising ''items'' paragraphs f introductory text, f.1, f.1.d, h.1, h.2, i.1, i.2, and j in the List of Items Controlled section to read as follows:

9E003 Other ''technology'' as follows (see List of Items Controlled).

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List of Items Controlled

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Related Controls: (1) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). ''Technology'' is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, ''parts'' or ''components,'' a commodity jurisdiction determination from the Department of State.

* * * * *

Items:

a. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following gas turbine engine ''parts,'' ''components'' or systems:

* * * * *

a.3. ''Parts'' or ''components'' manufactured from any of the following:

* * * * *

a.4. Uncooled turbine blades, vanes, ''tip shrouds'' or other ''parts'' or ''components,'' designed to operate at gas path total (stagnation) temperatures of 1,323 K (1,050°C) or more at sea-level static take-off (ISA) in a 'steady state mode' of engine operation;

* * * * *

a.7. Gas turbine engine ''parts'' and ''components'' using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. 'Damage tolerant' gas turbine engine rotor ''parts'' and ''components'' using powder metallurgy materials controlled by 1C002.b; *or*

Technical Note: 'Damage tolerant' ''parts'' and ''components'' are designed using methodology and substantiation to predict and limit crack growth.

* * * * *

c. ''Technology'' ''required'' for manufacturing cooling holes, in gas turbine engine ''parts'' and ''components'' incorporating any of the ''technologies'' specified by 9E003.a.1, 9E003.a.2 or 9E003.a.5, and having any of the following:

* * * * *

f. ''Technology'' ''required'' for the ''production'' of specially designed ''parts'' and ''components'' for high output diesel engines, as follows:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following ''parts'' and ''components'' employing ceramics materials controlled by 1C007:

* * * * *

f.1.d. One or more other ''part'' or ''component'' (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

h. * * *

h.1. ''Development'' ''technology'' for deriving the functional requirements for the ''parts'' and ''components'' necessary for the ''FADEC system'' to regulate engine thrust or shaft power (e.g., feedback sensor time constants and accuracies, fuel valve slew rate);

h.2. ''Development'' or ''production'' ''technology'' for control and diagnostic ''parts'' and ''components'' unique to the ''FADEC system'' and used to regulate engine thrust or shaft power;

i. * * *

i.1. ''Development'' ''technology'' for deriving the functional requirements for the ''parts'' and ''components'' that maintain engine stability;

i.2. ''Development'' or ''production'' ''technology'' for ''parts'' and ''components''

unique to the adjustable flow path system and that maintain engine stability;

* * * * *

j. ''Technology'' not otherwise controlled in 9E003.a.1 through a.8, a.10, and .h and used in the ''development'', ''production'', or overhaul of hot section ''parts'' and ''components'' of civil derivatives of military engines controlled on the U.S. Munitions List.

* * * * *

272. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E101 is amended by revising the ''Related Controls'' paragraph in the List of Items Controlled section to read as follows:

9E101 ''Technology'' according to the General Technology Note for the ''development,'' ''production'' or ''use'' of commodities or software controlled by 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9C110, 9D101, 9D103, 9D104 or 9D105.

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List of Items Controlled

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Related Controls: ''Technology'' controlled by 9E101 for items in 9A101.b, 9A104 to 9A111, 9A115 to 9A119, 9D103, and 9D105 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

273. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9E102 is amended by revising the ''Related Controls'' paragraph (2) in the List of Items Controlled section to read as follows:

9E102 ''Technology'' according to the General Technology Note for the ''use'' of space launch vehicles specified in 9A004, or commodities or software controlled by 9A005 to 9A012, 9A101, 9A104 to 9A111, 9A115 to 9A119, 9B105, 9B106, 9B115, 9B116, 9B117, 9D101, 9D103, 9D104 or 9D105.

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List of Items Controlled

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Related Controls: * * * (2) ''Technology'' controlled by 9E102 for commodities or software ''subject to the ITAR'' (see 22 CFR parts 120 through 130) in 9A004 to 9A011, 9A101.b, 9A104, 9A105, 9A106.a to .c, 9A107 to 9A111, 9A115 to 9A119, 9B115, 9B116, 9D103, specified software in 9D104, and 9D105 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).

* * * * *

Dated: November 16, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 665
Taking of Marine Mammals Incidental to Commercial Fishing Operations; False Killer Whale Take Reduction Plan; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 665

[Docket No. 110131070–2626–02]

RIN 0648–BA30

Taking of Marine Mammals Incidental to Commercial Fishing Operations; False Killer Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, NMFS, issue the final False Killer Whale Take Reduction Plan (FKWTRP), and regulatory measures and non-regulatory measures and recommendations to reduce mortalities and serious injuries of false killer whales in Hawaii-based longline fisheries. Regulatory measures include gear requirements, longline prohibited areas, training and certification in marine mammal handling and release, captains' supervision of marine mammal handling and release, and posting of NMFS-approved placards on longline vessels. In this rule, NMFS also recommends research and data collection programs. This final rule also revises the boundaries of the longline prohibited area around the main Hawaiian Islands to be consistent with the prohibited area established under the FKWTRP regulations. The FKWTRP is based on consensus recommendations submitted to NMFS by the False Killer Whale Take Reduction Team (Team), with certain modifications described herein that were determined to be necessary to meet the requirements of the MMPA. This final rule is necessary because current mortality and serious injury levels of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales incidental to the Hawaii-based pelagic longline fisheries are above the stocks' potential biological removal (PBR) levels, and are therefore inconsistent with the short- and long-term goals of the Marine Mammal Protection Act (MMPA). The FKWTRP is intended to meet the requirements of the MMPA.

DATES: This rule is effective December 31, 2012, except for the addition of §§ 229.3(v) and 229.37(c), which are effective February 27, 2013.

ADDRESSES: This final rule (the False Killer Whale Take Reduction Plan, or FKWTRP), the final Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis, the proposed rule (proposed FKWTRP), the FKWTRP compliance guide, the recommendations submitted by the Team (the Draft FKWTRP), references, and other background documents are identified by NOAA–NMFS–2011–0042 and are available at *www.regulations.gov,* at the Take Reduction Team web site: *www.nmfs.noaa.gov/pr/interactions/trt/falsekillerwhale.htm,* or by submitting a request to the Regulatory Branch Chief, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

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SUPPLEMENTARY INFORMATION:

Background

This final rule, which serves as the final FKWTRP, implements regulatory and non-regulatory measures recommended by the Team, with some modifications, to satisfy the requirements of the MMPA. Details concerning the justification for and development of this FKWTRP were provided in the proposed rule (76 FR 42082, July 18, 2011) and are not repeated here. NMFS requested public comment on the proposed rule and provided a 90-day public comment period. In addition, one Team meeting was conducted during the 90-day public comment period. Below, we provide information on the affected false killer whale stocks, describe the final FKWTRP management measures, summarize the public comments received and provide responses, and describe changes made to the proposed regulations based on the comments.

Distribution and Stock Structure of False Killer Whales in the Pacific Islands Region

False killer whales are found worldwide mainly in tropical and warm-temperate waters (Stacey et al., 1994). In the North Pacific, this species is well known from southern Japan, Hawaii, and the eastern tropical Pacific. There are six stranding records from Hawaiian waters (Nitta, 1991; Maldini et al., 2005). One on-effort sighting of false killer whales was made during a NMFS 2002 shipboard survey and six during a 2010 shipboard survey of waters within the U.S. Exclusive Economic Zone (EEZ) around the Hawaii Archipelago (Barlow, 2006; Bradford et al., 2012). Smaller-scale surveys conducted around the main Hawaiian Islands (MHI) show that false killer whales are also encountered in nearshore waters there (Mobley et al., 2000; Baird et al., 2008), and sightings during the 2010 shipboard survey reveal that the species also occurs near shore in the Northwestern Hawaiian Islands (NWHI; Baird et al., 2012). This species also occurs in the U.S. EEZ around Palmyra Atoll, Johnston Atoll (NMFS unpublished data), and American Samoa (Johnston et al., 2008; Oleson, 2009; Carretta et al., 2012a).

In the MMPA draft 2012 Stock Assessment Report (SAR), there are five Pacific Islands Region management stocks of false killer whales: (1) The Hawaii Insular stock, which includes false killer whales inhabiting waters within 140 km (approximately 75 nm) of the MHI; (2) the NWHI stock, which includes false killer whales inhabiting waters within 93 km (50 nm) of the NWHI and Kauai; (3) the Hawaii Pelagic stock, which includes false killer whales inhabiting waters greater than 40 km (22 nm) from the MHI; (4) the Palmyra Atoll stock, which includes false killer whales found within the U.S. EEZ around Palmyra Atoll; and (5) the American Samoa stock, which includes false killer whales found within the U.S. EEZ around American Samoa (Carretta et al., 2012a). For reasons described in the **Federal Register** notice establishing the Team (75 FR 2853, January 19, 2010), the American Samoa stock was not included in the scope of the Team's discussions. The newly defined NWHI stock was also not included in the scope of the Team's discussions because the survey information was not yet available. Neither stock is described further in this final FKWTRP.

Moreover, because the 2010 survey information only recently became available, this FKWTRP incorporates abundance estimates for the Hawaii Pelagic and Hawaii Insular Stocks that were not considered by the Team or identified in the proposed rule. However, these new abundance estimates do not change any of the regulatory or non-regulatory measures identified in the proposed rule, and are used primarily to supplement and explain existing information in the record, including the determination of each stock's current PBR. The Team was advised at various meetings of the ongoing cetacean survey and data analysis, and of the likelihood that abundance estimates and PBR for the Hawaii Pelagic stock of false killer whales would increase some amount. Both the Team's consensus FKWTRP and the proposed FKWTRP identified a

process for closing an area to deep-set longline fishing based, in part, on PBR and abundance estimates that would change as new information became available.

The non-strategic Palmyra Atoll stock of false killer whales was included in the scope of the Team's discussions (see Notice of Establishment of a False Killer Whale Take Reduction Team and Meeting, 75 FR 2853, January 19, 2010), the Team's recommendations (FKWTRT, 2010), and NMFS' proposed Plan (76 FR 42082, July 18, 2011). MMPA Section 118(f)(1) provides that NMFS may develop take reduction plans for non-strategic marine mammal stocks interacting with a Category I fishery if NMFS determines, after notice and opportunity for public comment, that the fishery has a high level of mortalities and serious injuries (M&SI) across a number of such marine mammal stocks. The MMPA does not further define the term ''high level''. However, evaluation of the fishery's M&SI compared to PBR for the non-strategic marine mammals taken in the fishery, as presented in the final 2011 SARs (Carretta et al., 2012b; assessments for these stocks were not updated in the draft 2012 SARs), indicate levels of M&SI (i.e., between 0 and 4.7 percent of PBR) across seven stocks that meet the insignificance threshold set forth in 50 CFR 229.2. Accordingly, NMFS does not consider this level of M&SI of non-strategic marine mammal stocks to be a ''high level'' for purposes of including these stocks in a take reduction plan. Therefore, NMFS is not including any non-strategic marine mammal stocks, including the Palmyra Atoll stock, in the scope of this final Plan.

Abundance Estimates and Potential Biological Removal Levels

Hawaii Insular Stock of False Killer Whales

A Status Review for the Hawaii Insular stock (Oleson et al., 2010) used recent, unpublished abundance estimates for two time periods, 2000–2004 and 2006–2009 in their Population Viability Analysis (PVA). Two separate estimates for 2006–2009 were presented in the Status Review, 151 (coefficient of variation, or CV=0.20; the CV is a measurement of the variation in the data, and is calculated as the ratio of the standard deviation to the mean) and 170 (CV=0.21), depending on whether animals photographed near Kauai are included in the estimate (Baird, unpublished data). As the animals seen near Kauai have now been associated with the NWHI stock (Baird et al., 2012), the best estimate of population size is taken as the smaller estimate (Carretta et al., 2012a). However, it should be noted that even this smaller estimate may be an overestimate, because missed matches were discovered after the mark-recapture analyses were complete (discussed in Oleson et al., 2010; Carretta et al., 2012a).

The minimum population estimate for the Hawaii Insular stock of false killer whales is the number of distinct individuals identified during the 2008–2011 photo-identification studies, which is 129 false killer whales (Baird, Hawaii insular false killer whale catalog; Carretta et al., 2012a). No data are available on current or maximum net productivity rate for this stock. NMFS proposed to list the Hawaiian Insular population of false killer whales (defined to be the same as the Hawaii Insular stock) as an endangered distinct population segment (DPS) under the ESA (75 FR 70169, November 17, 2010).

The MMPA, section 3(20) defines PBR as the ''maximum number of animals, excluding natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.'' PBR is calculated as the product of minimum population size, one-half the maximum productivity rate, and a recovery factor (MMPA Sec. 3(20), 16 U.S.C. 1362). The PBR level for the Hawaii Insular false killer whale stock is calculated as the minimum population size (129) times one half the default maximum net growth rate for cetaceans (one half of 4 percent) times a recovery factor of 0.1, resulting in a PBR of 0.3 false killer whales per year, as of the draft 2012 SAR (Carretta et al., 2012a). The recovery factor reported in the SAR (Carretta et al., 2012a) was chosen to be 0.1 because the stock has been proposed for listing as endangered under the U.S. Endangered Species Act and because of the significant recent decline experienced by this stock (Oleson et al. 2010).

Hawaii Pelagic Stock of False Killer Whales

An abundance survey of the U.S. EEZ around Hawaii (Hawaiian Islands Cetacean and Ecosystem Assessment Survey, or HICEAS) was completed in 2010 and resulted in five on-effort detections of false killer whales attributed to the Hawaii Pelagic stock. Recent analysis of the 2010 shipboard line-transect survey resulted in an abundance estimate of 1,503 (CV=0.66) false killer whales (Bradford et al., 2012) outside of 40 km (22 nm) of the MHI. Behavioral observations and assessment of the line-transect detection function indicate that false killer whales are attracted to the survey vessel (Bradford et al., 2012). The abundance estimate has not been corrected for vessel attraction and is considered an over-estimate of population abundance. The acoustic data collected during the 2010 survey are still being analyzed such that additional refinements to this estimate are expected. A 2005 survey (Barlow and Rankin, 2007) resulted in a separate abundance estimate of 906 (CV = 0.68) false killer whales in international waters south of the U.S. EEZ around Hawaii and within the U.S. EEZ around Johnston Atoll, but it is unknown how many of these animals might belong to the Hawaii Pelagic stock.

The log-normal 20th percentile (''Nmin'') of the 2010 abundance estimate for the U.S. EEZ around Hawaii outside of 40 km (22 nm) from the MHI (Bradford et al., 2012) is 906 false killer whales. This Nmin has not been corrected for vessel attraction and may be an over-estimate of minimum population size. No data are available on current population trend or on current or maximum net productivity rate for this stock.

Following the NMFS Guidelines for Assessing Marine Mammal Stocks (GAMMS) (NMFS, 2005a), the PBR is calculated only within the U.S. EEZ around Hawaii because abundance estimates and estimates of human-caused M&SI from all U.S. and non-U.S. sources are not available for the high seas where this stock also occurs. The PBR level for the Hawaii Pelagic stock of false killer whale is thus calculated as the minimum population size within the U.S. EEZ around Hawaii (906) times one half the default maximum net growth rate for cetaceans (one half of 4 percent) times a recovery factor of 0.5 (for a stock of unknown status with the CV of the M&SI rate in the U.S. EEZ around Hawaii equal to 0.3; Wade and Angliss, 1997), resulting in a PBR of 9.1 false killer whales per year, as of the draft 2012 SAR (Carretta et al., 2012a).

Mortality and Serious Injury Estimates

The total observed M&SI of cetaceans in the shallow-set longline fishery (with 100 percent observer coverage) and the estimated annual and 5-year average M&SI of cetaceans in the deep-set longline fishery (based on approximately 20 percent observer coverage) are reported by McCracken (2011). The methodology includes prorating all estimated incidental takes of false killer whales and observed takes for which an injury severity determination could not be made, based on the proportions of observed interactions that resulted in death or serious injury (93 percent), or non-

serious injury (7 percent) between 2000 and 2010. Further, incidental takes of false killer whales of unknown stock origin within the Hawaii Insular/Pelagic stock overlap zone are prorated using a model that assumes that the density of the Hawaii Insular stock decreases and the density of the Hawaii Pelagic stock increases with increasing distance from shore (McCracken, 2010a). No genetic samples are available to establish stock identity for these incidental takes within the Hawaii Insular/Pelagic stock overlap zone, but both stocks are considered by NMFS to be at risk of interacting with longline gear within this region. Finally, incidental takes of unidentified cetaceans, known to be either false killer whales or short-finned pilot whales (together termed ''blackfish''), are determined using a formula that prorates takes to the stocks based on their distance from shore (McCracken, 2010a). Proration of false killer whales takes within the overlap zone and of unidentified blackfish introduces additional, yet unquantified, uncertainty into the bycatch estimates, but until methods of determining stock identity for animals observed incidentally taken within the overlap zone are available, and all animals taken can be identified to species (e.g., photos, tissue samples), this approach ensures that potential impact to all stocks are assessed and accounted for.

Based on these bycatch analyses, estimates of annual and 5-year average annual incidental M&SI of false killer whales, by stock and U.S. EEZ area, are presented in the draft 2012 SAR (Carretta et al., 2012a). The estimate for the Hawaii Pelagic stock occurring *inside* the U.S. EEZ around Hawaii was 13.6 false killer whales per year (CV = 0.3) in the deep-set fishery and 0.2 in the shallow-set fishery, for a total of 13.8 false killer whales per year (CV = 0.3). Using data from 2006–2010, the mean estimated annual incidental M&SI of false killer whales in the Hawaii Pelagic stock occurring *outside* of the U.S. EEZ was 11.2 (CV = 0.3) in the deep-set fishery and 0.1 in the shallow-set fishery, for a total of 11.3. The mean estimated annual incidental M&SI of false killer whales in the Hawaii Insular stock was 0.5 false killer whales per year (CV = 1.7) in the deep-set fishery and 0 false killer whales per year in the shallow-set fishery.

Goals of the FKWTRP

Incidental M&SI of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales in the Hawaii-based longline fisheries is known to exceed the stocks' PBR levels (Carretta et al., 2012a). The short-term goal of the FKWTRP is to reduce, within six months of its implementation, M&SI of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales incidental to the Hawaii-based longline fisheries occurring within the U.S. EEZ around Hawaii to less than the stocks' PBR levels of 9.1 and 0.3 false killer whales per year, respectively (Carretta et al., 2012a).

The Hawaii Pelagic stock is a transboundary stock that inhabits waters both within and outside of the U.S. EEZ around Hawaii; however, the extent of the stock's range into the high seas is unknown. The Hawaii-based longline fisheries operate both within the U.S. EEZ and on the high seas, and incidental M&SI of the Hawaii Pelagic stock of false killer whales have been documented both within the U.S. EEZ and on the high seas. Better information on the full geographic range of this stock and bycatch estimates in international fisheries are needed to better understand the impacts of false killer whale incidental takes on the high seas. However, these information gaps do not affect the Hawaii Pelagic false killer whale stock's designation as ''strategic'' (i.e., the level of human-caused mortality exceeds the stock's PBR level; 16 U.S.C. 1362(19)(A)). To ensure that conservation measures of the FKWTRP would not simply displace fishing effort and its corresponding impacts on the Hawaii Pelagic false killer whale from the U.S. EEZ to the high seas, a goal of the FKWTRP is that incidental M&SI of the high seas component of the Hawaii Pelagic stock does not increase above current levels (i.e., 11.2 false killer whales per year, as of the draft 2012 SAR, Carretta et al., 2012a).

The long-term goal of the proposed FKWTRP is to reduce, within five years of its implementation, the incidental M&SI of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales to insignificant levels approaching a zero mortality and serious injury rate (i.e., less than 10 percent of their respective PBR levels), as determined under 50 CFR 229.2.

Components of the FKWTRP

The final FKWTRP includes both regulatory and non-regulatory measures, as well as a suite of research recommendations. While the primary focus of the FKWTRP involves the Hawaii-based deep-set longline fishery, there are measures and research that apply to other fisheries known or suspected to interact with false killer whales.

NMFS believes the suite of measures described below are currently appropriate for meeting the goals of the FKWTRP, but anticipates that new information on the biology, distribution, abundance, and stock structure of false killer whales, as well as on the extent and nature of interactions between commercial fisheries and false killer whales, will become available in the future. Similarly, future innovations in fishing gear and/or fishing methods may change the extent and nature of interactions between commercial fisheries and false killer whales. As such, NMFS and the Team agreed to evaluate the success of the final FKWTRP at periodic intervals over the next several years, and to consider amending the FKWTRP, if warranted, based on the results of ongoing monitoring, research, and evaluation.

NMFS incorporated nearly all of the Team's consensus recommendations from the Draft FKWTRP into the proposed and final FKWTRP, with some modifications. Changes from the Team's consensus recommendations are noted, along with the rationale for any changes. The Team also discussed other mitigation and conservation measures that were not included in their consensus recommendations for various reasons (e.g., did not meet MMPA goals). Information on these can be reviewed in the Draft FKWTRP (FKWTRT, 2010). Finally, the Team made additional recommendations regarding the shortline and kaka line fisheries, other fisheries, and foreign fisheries that are outside the scope of this rulemaking. Those recommendations are not part of this final FKWTRP, but may be informative for future Team deliberations. Those detailed recommendations can be found in section 8.4 of the Draft FKWTRP (FKWTRT, 2010).

Regulatory Measures

NMFS issues the following FKWTRP regulatory measures under MMPA authority:

1. Require the use of circle hooks that have a maximum wire diameter of 4.5 mm (0.177 in), 10 degree offset or less, containing round (non-flattened) wire that can be measured with a caliper or other appropriate gauge in the Hawaii-based deep-set fishery;

2. Establish a minimum 2.0 mm (0.079 in) diameter for monofilament leaders and branch lines, and a minimum breaking strength of 400 pounds (181 kg) for any other material used in the construction of a leader or branch line in the Hawaii-based deep-set longline fishery;

3. Establish a longline exclusion zone around the MHI that is closed to longline fishing year-round; the 282,796 km^2 (82,450 nmi^2) area has the same

name and boundary as the February–September boundary of the MHI Longline Prohibited Area described in 50 CFR 665.806(a)(2);

4. Expand the content of the existing, mandatory Protected Species Workshop for the Hawaii-based longline fishery to include new information on marine mammal interaction mitigation techniques;

5. Require a NMFS-approved marine mammal handling and release informational placard to be posted onboard all Hawaii-based longline vessels;

6. Require the captain of the longline vessel to supervise the handling and release of any hooked or entangled marine mammal;

7. Require a NMFS-approved placard that instructs the vessel crew to notify the captain in the event of a marine mammal interaction be posted onboard all Hawaii-based longline vessels; and

8. Establish a ''Southern Exclusion Zone'' (SEZ) that will be closed to the commercial Hawaii-based deep-set longline fishery for varying periods of time whenever specific levels of serious injuries or mortalities of false killer whales are observed within the U.S. EEZ around Hawaii.

Additionally, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), NMFS is revising the regulations in 50 CFR 665.806 prescribing the existing MHI longline fishing prohibited area by removing the seasonal boundary change. This action will align the boundaries of the MHI longline prohibited area with those of the prohibited area established under this FKWTRP, and is necessary to ensure that existing regulations applicable to the management of the longline fishery are consistent with the requirements of the FKWTRP and the MMPA (see measure 3. above).

These measures are more fully described below.

1. Hook Requirements

Shape. NMFS is requiring that vessels on declared deep-set trips must use only circle hooks, as recommended by the Team and proposed by NMFS. Analysis of observer data and predictive simulations indicate that the exclusive use of circle hooks in the deep-set longline fishery would likely reduce the number of false killer whale incidental takes (i.e., prevent some hookings) by approximately 6 percent, and may reduce the severity of injuries following interactions (FKWTRT, 2010; Forney et al., 2011). Circle hooks are also generally weaker (i.e., straighten with less force) than the Japanese-style tuna hooks used by a portion of the longline fleet, so some false killer whales that are hooked in the lip, jaw, body, or flukes may be able to pull free more easily (i.e., straighten the hook) if tension is placed on the line. Thus, the required use of circle hooks may further reduce the number of incidental M&SI of false killer whales in the deep-set longline fishery.

Size. This final rule does not include a specification of size for circle hooks in the deep-set fishery. NMFS is concerned that the maximum size specification of 16/0 that was proposed by NMFS would preclude the use of larger circle hooks (e.g., size 18/0) that are known to be effective in reducing bycatch of other protected species, such as sea turtles, in other fisheries. Currently there is no information to indicate that use of smaller circle hooks results in injuries to false killer whales that are less serious compared to larger circle hooks. See comment/response 31 for more details.

Wire diameter. NMFS proposed the required use of ''weak'' circle hooks in the deep-set fishery. ''Weak'' hooks exploit the size and weight disparity between the fishery's target species and other species, and promote the release of larger, non-target or bycatch species (Bigelow et al., 2011). In this case, hooks are expected to be strong enough to retain target bigeye tuna catch, but should bend and straighten under the pull strain of a hooked false killer whale, allowing the animal to release itself and thereby reduce the severity of the animal's injury.

Wire diameter is one characteristic of a hook that contributes to its strength. During the development of the Draft and proposed FKWTRPs, NMFS and the Team understood that the ''standard'' wire diameter of circle hooks used in the deep-set fishery was 4.5 mm (0.177 in), based on the information available at that time. Based on this understanding, the Team concluded that the use of circle hooks of 4.0 mm (0.157 in) or 4.2 mm (0.165 in) would provide even greater conservation benefits, because a false killer whale may be able to more easily straighten and release itself from a weaker hook, possibly resulting in less serious injuries. The Team recommended the required use of circle hooks with a maximum wire diameter of 4.0 mm (0.157 in), if a new research study was conducted and showed that the weaker hooks had no significant negative impacts on the retention of target species catch. If the analysis demonstrated that the use of 4.0 mm (0.157 in) hooks will have a substantial impact on tuna catch rates, the Team recommended additional trials to test whether 4.2 mm (0.165 in) hooks would have a substantial impact on tuna catch rates. NMFS, in collaboration with the longline industry and other partners, conducted the research in October–December 2010 and found no significant impact to target catch of circle hooks with wire diameter of 4.0 mm (0.157 in) compared to 4.5 mm (0.177 in) (Bigelow et al., 2011). NMFS did not conduct trials with 4.2 mm (0.165 in) hooks. The Team's recommendations and the results of the study formed the basis of NMFS' proposed requirement that the wire diameter of circle hooks in the deep-set longline fishery must not exceed 4.0 mm (0.157 in).

Two significant issues regarding the wire diameter requirement were raised during the public comment period. First, commenters and Team members emphasized that the Bigelow et al. (2011) study was not adequate to determine the potential effects of the weak hooks in the deep-set fishery. Specifically, commenters noted that the study was not conducted during the time of year when the largest bigeye tuna are historically caught, and the fish caught during the study period were substantially smaller than fish caught during that same time frame in previous years. Thus, they argued, the study was not able to confirm that larger bigeye tuna could be retained on the 4.0 mm (0.157 in) wire diameter hooks. Follow-up analysis by Bigelow (2012) confirmed the seasonality effect of size and value of bigeye tuna in the fishery. Based on these findings, NMFS does not have sufficient data to determine whether the proposed weak hooks would have a significant impact on target catch throughout the year.

Second, NMFS received new information during the public comment period that indicates that the use of 4.5 mm (0.177 in) wire diameter circle hooks in the deep-set fishery is not as widespread as was first believed during the development of the Team's recommendations and NMFS' proposed FKWTRP, and therefore is not representative of an industry ''standard.'' NMFS confirmed this information by contacting major hook suppliers for the deep-set fishery. Information was obtained for approximately 80 percent of the vessels in the deep-set fishery. Only an estimated 20 percent of those vessels are believed to be using size 15/0 or smaller circle hooks with wire diameter of 4.5 mm (0.177 in) or less; the remaining 80 percent are believed to be using circle hooks with a larger wire diameter (e.g., size 16/0 circle hooks with 4.7 mm (0.185 in) or 5.0 mm (0.197 in) wire

diameter), or are using tuna or J hooks. Therefore, the majority of hooks currently in use are of larger wire diameter, and are therefore likely stronger, than what was believed to be the ''standard'' wire diameter for circle hooks in the deep-set fishery.

The Team's consensus recommendation was that while ''standard'' circle hooks (14/0, 15/0, 16/0; 4.5mm wire diameter) alone will likely help reduce M&SI compared to tuna and J hooks, weaker than standard circle hooks (i.e., those with a smaller wire diameter, such as 4.0 mm (0.157 in) or 4.2mm (0.165 in)) would provide even greater conservation benefits. We agree. However, as indicated above, the Team's recommendation was based on the assumption at the time that the standard diameter in use by the industry was 4.5 mm (0.177 in), rather than the more commonly used 4.7 mm (0.185 in) or 5.0 mm (0.197 in). Accordingly, while we agree with the Team's findings, NMFS will require a fleet-wide shift to 4.5 mm (0.177 in) wire diameter for circle hooks, so as to achieve a comparable reduction in hook wire diameter based on the corrected information.

In summary, NMFS has insufficient information to support the required use of circle hooks with 4.0 mm (0.157 in) wire diameter at this time. In response to information received or obtained during the public comment period, NMFS is revising the regulations to specify a maximum wire diameter of 4.5 mm (0.177 in). NMFS believes this requirement will provide a conservation benefit by reducing false killer whale serious injuries because the weaker hook is more easily straightened to release the animal. NMFS also believes that this reduction in wire diameter from the 4.7 mm (0.185 in) or 5.0 mm (0.197 in), used by an estimated 80% of the industry, to 4.5 mm most closely approximates the recommendation of the Team and the proposed FKWTRP after accounting for updated information on the hook wire diameters in the industry.

Other specifications. The Team recommended and NMFS proposed that hook shanks must be made of round (non-flattened) wire to allow for enforcement of the proposed wire diameter regulation. We understand, based on public comment (see comment/response 33), that there is a large variety of hooks with flattened sections of wire that otherwise may satisfy the requirements of this measure. Accordingly, NMFS is not requiring that the entire hook shank be composed of round wire. Instead, NMFS is requiring that hook shanks contain round (non-flattened) wire that can be measured with a caliper or other gauge.

Final regulation. NMFS is requiring that deep-setting vessels use circle hooks with a wire diameter not to exceed 4.5 mm (0.177 in), and containing round (non-flattened) wire that can be measured with a caliper or other appropriate gauge, and with a 10-degree offset or less. Any hook not meeting the requirement would not be allowed to be used on deep-set trips, though other hooks may be on board the fishing vessel if stowed and unavailable for use.

This new regulation will be codified in the take reduction plan regulations at 50 CFR Part 229, rather than 50 CFR 665.813 as proposed. NMFS has consolidated all FKWTRP regulations in 50 CFR part 229 to more clearly reflect the authority under which the regulations have been promulgated.

2. Minimum Monofilament Diameter Requirement for Branch Lines and Leaders

Observer data indicate that monofilament used in leaders and branch lines may break during marine mammal hookings and entanglements, which causes animals to be released with often substantial amounts of gear still attached. According to the criteria NMFS uses to determine injury severity, small cetaceans released with gear attached that has the potential to wrap around pectoral fins/flippers, peduncle, or head; be ingested; or accumulate drag would be considered seriously injured (NMFS Policy Directive PD 02–238). The Team believes that if the fishery used leaders and branch lines that were strong relative to the hook strength, during a marine mammal hooking or entanglement, fishermen could place tension on the line to allow the animal to straighten the hook without breaking the branch line. Or, fishermen could bring the animal close to the vessel for disentanglement and/or de-hooking attempts without breaking the branch line. Therefore the Team recommended and NMFS is requiring that any monofilament line used in branch lines or leaders in the deep-set fishery must be 2.0 mm (0.079 in) or larger in diameter. This diameter monofilament line has a breaking strength of approximately 400 pounds (181 kg). Any other materials used in branch lines or leaders must have a breaking strength of 400 pounds (181 kg) or greater. The intent of this measure is that the gear be assembled and maintained such that the hook is the weakest component of the terminal tackle. It is expected that this regulation will reduce the number of false killer whale serious injuries.

This new regulation is added to the take reduction plans at 50 CFR Part 229, rather than 50 CFR 665.813 as proposed. NMFS has consolidated all FKWTRP regulations in 50 CFR part 229 to more clearly reflect the authority under which the regulations have been promulgated.

3. Main Hawaiian Islands Longline Fishing Prohibited Area

An existing longline exclusion zone prohibits longline fishing year-round around the MHI (50 CFR 665.806(a)(2)). The exclusion zone was created in 1992 to prevent gear conflicts between longline fisheries and pelagic troll and handline fisheries (57 FR 7661, March 2, 1992). The outer extent of the boundary changes seasonally to allow longline fishing to occur closer to the windward shores of the MHI between October and January (WPRFMC, 2009). This seasonally open area covers 71,384 km^2 (20,812 nmi^2).

The seasonally open area is within the area of overlap between the Hawaii Insular and Hawaii Pelagic stocks of false killer whales as defined in the draft 2012 SAR (Carretta et al., 2012a), and incidental M&SI of false killer whales and blackfish in the longline fisheries has been documented there. Given that longline fishing in this area may impact both false killer whale stocks, the Team recommended that NMFS designate the seasonally open area as a ''Northern Exclusion Zone'' (NEZ), and close it to commercial longline fishing year-round. Such a closure would effectively maintain the current boundary of the February-September longline exclusion zone prohibitions throughout the entire year.

NMFS proposed to implement the Team's recommendation by revising the existing longline exclusion zone regulations to eliminate the seasonal change in the boundary, rather than establishing a separate NEZ closure area. NMFS received public comments on this proposed change, including: (a) Confusion over the legal authority used to make the change (i.e., MSA vs. MMPA); (b) concern that the different regulatory purposes of the original closure (gear conflict) and the proposed closure (false killer whale conservation) are not clear; and (c) concern that including the closure only in 50 CFR part 665 and not in FKWTRP regulations at 50 CFR part 229 could allow future changes to the closure for fishery management purposes that would obviate the risk reduction necessary for false killer whales. See comments/responses 3–5 and 38–41

below for more detail on these comments.

In this final rule NMFS is establishing a Main Hawaiian Islands Longline Fishing Prohibited area (Figure 1) in FKWTRP regulations at 50 CFR part 229, bounded by the same coordinates as the existing February-September longline exclusion zone. Longline fishing within this area is prohibited year-round. This regulation makes it clear that the entire Longline Fishing Prohibited Area around the MHI, not just the seasonally open area to the north of the MHI, is important for false killer whale conservation. It is anticipated that this closure will substantially reduce the risk that the deep- and shallow-set longline fisheries pose to the Hawaii Insular stock of false killer whales, because longline fishing is now prohibited from the Hawaii Insular stock's entire ''core'' range and a large portion of the stock's ''extended'' range. It is also expected to eliminate incidental M&SI of the Hawaii Pelagic stock of false killer whales by longline fisheries in that area.

As previously indicated, the MHI Longline Fishing Prohibited Area was established in 50 CFR 665.806(a) under MSA authority. NMFS is using its authority under MSA section 305(d) to revise the existing regulations in 50 CFR 665.806(a)(2) for the MHI Longline Fishing Prohibited Area to eliminate the seasonal boundary change. This action is necessary to ensure that fisheries management regulations remain consistent with all applicable laws and regulations, including MMPA and the FKWTRP regulations.

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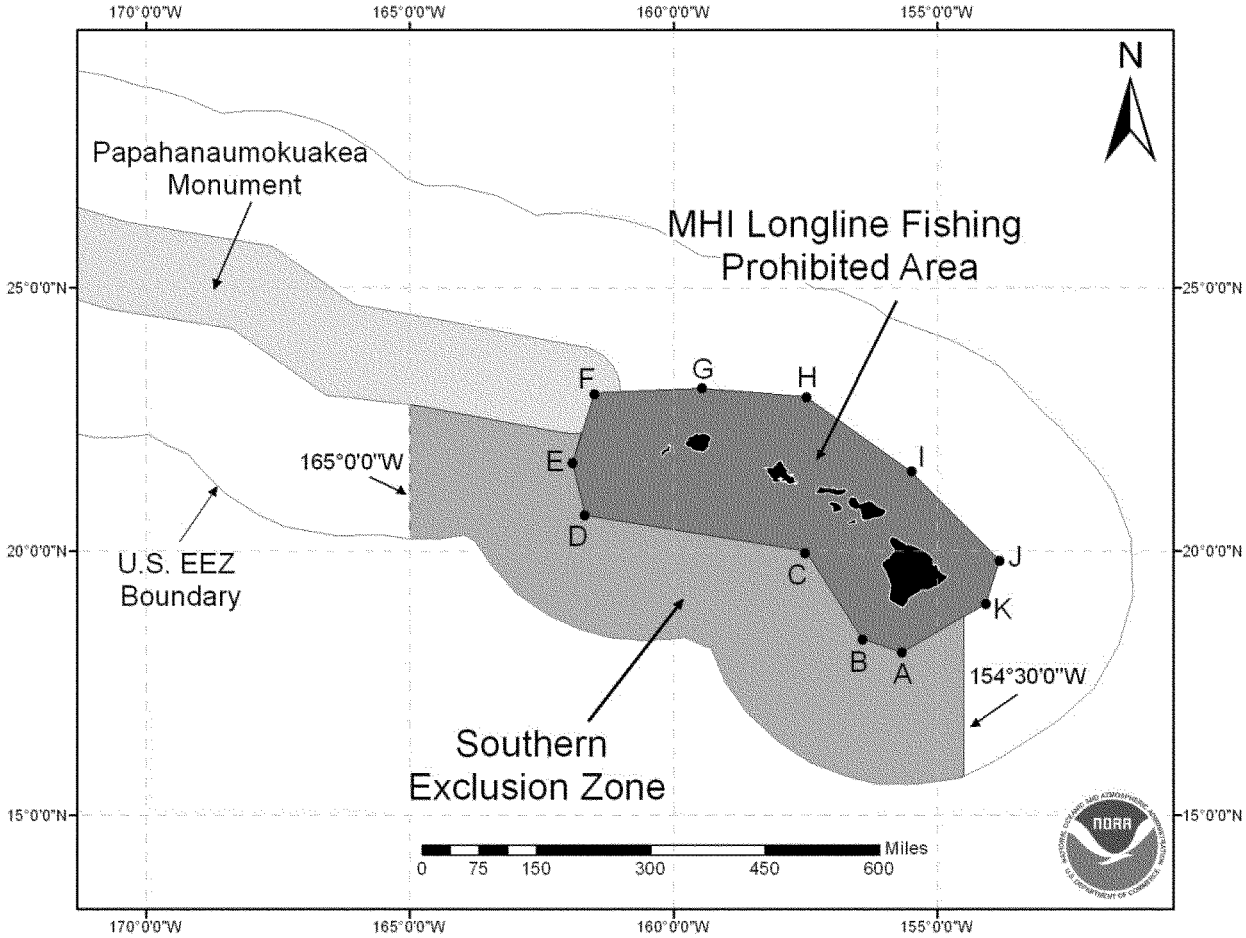
Figure 1. Main Hawaiian Islands Longline Fishing Prohibited Area and Southern Exclusion Zone. Inflection points are lettered as per the final regulations.



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4. Required Annual Certification in Marine Mammal Interaction Mitigation Training

The Team recommended that NMFS develop and implement a mandatory, annual certification program to educate owners and operators of Hawaii-based longline vessels about ways to reduce incidental M&SI of marine mammals. The Team that believes specific training would significantly increase the potential for captains and crew to free hooked or entangled false killer whales from gear in a manner that would reduce the severity of the injury (FKWTRT 2010). The Team recommended that NMFS expand the existing Protected Species Workshops, required under 50 CFR 665.814, to incorporate additional information regarding marine mammal interactions.

NMFS is implementing the Team's recommendation, as proposed. Under existing regulations for western Pacific pelagic fisheries (50 CFR 665.814,

Protected Species Workshop), owners and operators of all western Pacific pelagic longline vessels must successfully complete a workshop each year, and a valid workshop certificate is needed for owners to maintain or renew permits and for operators at sea. Sea turtle and seabird handling is specified in these regulations; there is no regulatory requirement for training in marine mammal handling. However, since 2004, NMFS has incorporated training on marine mammal identification, careful handling and release techniques, and an overview, as well as an explanation, of the purpose and justification for marine mammal bycatch reporting requirements that apply to the longline fisheries into these workshops. NMFS has expanded the content of the in-person workshops in consultation with the Team, and will continue to update the content as appropriate to meet the needs of the FKWTRP. The online version of the workshop will be revised to include the updated marine mammal content as soon as possible.

To ensure that the marine mammal component is maintained by regulation as part of the workshops, NMFS is adding the requirement for certification to the take reduction plan regulations at 50 CFR part 229, under MMPA authority.

5. Marine Mammal Handling and Release Guidelines Posting Requirement

The Team recommended, and NMFS is requiring, that all longline vessels in the Hawaii-based fleet must post a NMFS-approved marine mammal handling and release informational placard onboard in a location where it would be visible to the captain and crew. NMFS believes this action will facilitate the careful handling and release of marine mammals incidentally hooked or entangled during longline fishing, including false killer whales, other small cetaceans, and large whales. This requirement is specified in the take reduction plan regulations at 50 CFR part 229.

6. Requirement for Captains' Supervision of Marine Mammal Interactions

As noted above (see ''*4. Required Annual Certification in Marine Mammal Interaction Mitigation*''), longline vessel captains are required to attend and be certified annually in protected species interaction mitigation techniques (50 CFR 665.814). NMFS has expanded the content of these workshops to include more specific training in marine mammal handling and release. Vessel crew members are not required to receive certification. Therefore, the captain may be the only person on the vessel trained in marine mammal handling and release protocols, particularly on trips without an observer. However, the Team noted that captains may not always be on deck while the gear is being hauled and thus may not observe or be aware of marine mammal hooking or entanglement events. The Team recommended, and NMFS is requiring, that the captain of each longline vessel supervise the handling and release of any hooked or entangled marine mammal. The captain does not necessarily need to be on deck, but could, for example, oversee and direct specific actions from the wheelhouse, so long as the captain at all times maintains effective communications with and oversight of the crew. This requirement is specified in the take reduction plan regulations at 50 CFR part 229.

7. Captain Notification Placard Posting Requirement

At the Team's recommendation, NMFS developed a placard that instructs the vessel crew to notify the captain immediately if a marine mammal is hooked or entangled. The Team recommended, and NMFS is requiring, that all longline vessels in the Hawaii-based fleet must post this NMFS-approved placard onboard in a location where it would be visible to the crew. It is expected that this measure will facilitate crew notification of the captain, thereby ensuring the captain is aware of any marine mammal interactions and supervises the handling and release, as required above in ''*6. Requirement for Captains' Supervision of Marine Mammal Interactions*''. This requirement is specified in the take reduction plan regulations at 50 CFR part 229.

8. Southern Exclusion Zone Closure

In this final rule, NMFS is establishing a ''Southern Exclusion Zone'' (SEZ) that will be closed to deep-set longline fishing upon reaching a specified threshold level (or ''trigger'') of observed false killer whale mortalities or serious injuries inside the U.S. EEZ around Hawaii within a given fishing year. NMFS considered and rejected the use of final, annual extrapolated M&SI estimates because of the risk that PBR would be exceeded in a given fishing year once those estimates became available. By using observed incidental M&SI, NMFS will be able to make real-time management decisions concerning the fishery to close the SEZ if incidental M&SI exceeds PBR in any given year, and prevent further exceedance.

The SEZ is bounded on the east at 154° 30′ W. longitude, on the west at 165° W. longitude, on the north by the MHI Longline Fishing Prohibited Area and the Papahanaumokuakea Marine National Monument, and on the south by the U.S. EEZ boundary (Figure 1). The SEZ covers 386,122 km^2 (112,575 nmi^2), that if closed, would reduce the area available to longline fishing within the U.S. EEZ around Hawaii by approximately 17 percent.

NMFS received public comments raising numerous issues with the proposed SEZ provisions (see comments/responses 42–65). Several commenters urged NMFS to reconsider implementing the SEZ measures recommended by the Team, as described in the Draft FKWTRP (FKWTRT, 2010). In response to these comments and in developing this final rule, NMFS reevaluated the Team's recommendations, particularly in light of the newly calculated PBR for the Hawaii Pelagic stock in the draft 2012 SAR (Carretta et al., 2012a). The Team originally recommended a trigger for closing the SEZ that was the greater of two values: (1) Two observed false killer whale serious injuries or mortalities in the deep-set fishery inside the U.S. EEZ around Hawaii; or (2) the number of observed false killer whale serious injuries or mortalities inside the U.S. EEZ around Hawaii that, when extrapolated based on the percentage observer coverage for that year, is greater than PBR (FKWTRT, 2010). The triggers were designed to be flexible to a changing PBR once new abundance estimates became available and if there were future changes to PBR. NMFS considered the Team's recommended minimum trigger of two observed M&SI, and was concerned that it may not achieve adequate reductions in M&SI, as required under MMPA section 118. The recommended minimum trigger of two observed M&SI (which roughly extrapolates to 10 M&SI fleet-wide per year with 20 percent observer coverage) would have allowed PBR (2.5 at the time the Draft FKWTRP was developed and the proposed FKWTRP was published), to be exceeded by a factor of four before a consequence closure of the SEZ. This was not consistent with MMPA section 118 requirements that the Plan should be effective in reducing M&SI to below PBR, and eventually to insignificant levels, even when considered together with other measures in the Plan.

In the proposed rule, NMFS proposed modifications to the Team's recommended SEZ trigger to address the issue of PBR exceedance. We recognized that, given the PBR of 2.5, even a single

observed mortality or serious injury in a year (which extrapolates to 5 M&SI at 20 percent observer coverage) would be double the PBR value. Therefore, we proposed to manage M&SI across a longer time frame. We calculated that allowable level of M&SI across five years (i.e., five times PBR), converted this number to allowable observed M&SI across five years (by multiplying by the observer coverage level), and rounded down to the nearest whole number. We proposed this value as an ''initial'' trigger, thereby ''front-loading'' five years' worth of M&SI into a single year. If the initial trigger was met within a given year, the SEZ would be closed for the remainder of the year. Then, if a single additional mortality or serious injury was observed in any of the following four years of that five-year timeframe, the 5-year PBR would be exceeded, so the SEZ would again be closed, until reopened by NMFS.

Public comments raised several issues with the proposed SEZ trigger. The primary concern was that levels of M&SI below the ''initial'' trigger level could exceed PBR, in single years but particularly across consecutive years, without triggering closure of the SEZ. Commenters also noted that the ''initial'' trigger is based on the PBR value at the time the trigger was set, but the trigger for the subsequent four years of the five-year timeframe (1 observed mortality or serious injury) cannot be changed even if PBR were to change during those four years.

In developing this final rule, NMFS considered options for modifying the SEZ measures to address issues raised in public comments. As part of this process, NMFS reevaluated the Team's recommended trigger, particularly in light of the new PBR of 9.1 for the Hawaii Pelagic stock, as calculated in the draft 2012 SAR (Carretta et al., 2012a). We note that our initial concerns regarding the Team's minimum trigger have been addressed by the larger PBR value. That is, the Team's recommended minimum trigger of two observed M&SI (which extrapolates to an estimated 10 M&SI fleet-wide based on 20 percent observer coverage) would result in closure of the SEZ immediately after the observed mortality or serious injury that caused PBR to be exceeded. NMFS considers this an appropriate consequence for exceeding PBR and preventing further PBR exceedance.

In this final rule, NMFS is implementing an SEZ measure that more closely conforms to the Team's consensus recommendations described in the Draft FKWTRP (FKWTRT, 2010). In doing so, we remain concerned that the Team's recommendation might not adequately protect false killer whales under all factual scenarios if PBR were to be lower, for reasons explained above (i.e., the minimum trigger of two observed M&SI was too large, and would have allowed potentially high levels of PBR exceedance without a consequence closure of the SEZ). A reduced PBR for the Hawaii Pelagic stock is possible in the future, particularly to account for the survey's vessel attraction effect, as more fully discussed in the draft 2012 SAR (Carretta et al., 2012a). Accordingly, NMFS will continue to evaluate and consult with the Team on refinements to the SEZ trigger/closure that help respond to potential changes in PBR. If future refinements are necessary, they will be implemented by appropriate rulemaking.

The following paragraphs describe steps NMFS will take when determining whether to prohibit deep-set longline fishing in the SEZ. There are different procedures depending on whether there was a closure of the SEZ in the previous year. These steps closely approximate those outlined by the Team in the Draft FKWTRP.

a. *Defining the trigger.* The trigger is defined as the larger of these two values: (i) two observed M&SI of false killer whales by the deep-set fishery within the U.S. EEZ around Hawaii; or (ii) the smallest number of observed M&SI of false killer whales by the deep-set fishery within the U.S. EEZ around Hawaii that, when extrapolated based on the percentage observer coverage for that year, exceeds PBR. This trigger accounts for possible changes in observer coverage and PBR in future years under the FKWTRP. Therefore, under the first threshold, the minimum trigger is two. For the second threshold to be applicable (i.e., a trigger larger than two), PBR would need to be 10 or greater, given current levels of observer coverage (20 percent). If PBR were less than 10, two observed M&SI, when extrapolated based on observer coverage (10 animals), would exceed PBR. Since M&SI cannot exceed PBR, under this example the trigger would remain at two under the first threshold. If, on the other hand, PBR was determined to be 10 or greater, two observed M&SI, when extrapolated (10 animals based on observer coverage), would be less than or equal to PBR, so the trigger could be increased until M&SI exceeds PBR.

NMFS is specifying the trigger definition in the FKWTRP regulations and establishing the trigger value for this first year of FKWTRP implementation as two observed false killer whale mortalities or serious injuries by the deep-set longline fishery within the U.S. EEZ around Hawaii. This trigger value (two) will remain valid until NMFS publishes a new trigger value in the **Federal Register**. For example, if observer coverage in the deep-set fishery or PBR for the Hawaii Pelagic stock changes substantially enough to increase the trigger value (calculated as outlined in the paragraph above), NMFS would publish a new trigger value in a **Federal Register** notice.

There are three important considerations regarding the trigger calculations. First, the extrapolated estimates of false killer whale M&SI described in this section are calculated for purposes of implementing the SEZ only, and do not represent the official bycatch estimates for false killer whales in the fishery. The official bycatch estimates are calculated by separate methods and are presented in the annual SARs. Second, as the Team recommended and NMFS proposed, the trigger applies only to the Hawaii Pelagic stock of false killer whales given the stock's strategic status and the location of the closure. Although the Hawaii Insular stock is also strategic, closure of the SEZ would have very little effect on the stock because the SEZ is almost entirely outside the Hawaii Insular stock's range. For the purposes of implementing SEZ measures, any false killer whale incidentally taken inside the U.S. EEZ around Hawaii is assumed to be part of the Hawaii Pelagic stock, unless the animal could be positively identified as belonging to the Hawaii Insular stock through photo-identification or genetic analysis of a tissue sample. This is true even of false killer whales taken in the Hawaii Pelagic/Insular stock overlap zone. Those animals would be prorated for assignment to the stocks in the official bycatch estimates, but for purposes of implementing the SEZ, the animals cannot be prorated. Third, only observed serious injuries or mortalities would be counted toward the trigger, while injuries determined to be non-serious would not. The expedited process for serious injury determinations is described below (see ''*3. Expedite False Killer Whale Serious Injury Determinations*'' under ''Non-Regulatory Measures'').

b. *Procedures when no SEZ closure effective in previous year.* For the first year of FKWTRP implementation, and in years in which the SEZ was not closed in the previous year, the following three steps i. through iii. will be applied for the current year:

i. M&SI below the trigger. After each false killer whale mortality or serious

injury in the deep-set longline fishery inside the U.S. EEZ around Hawaii that is below the established trigger in a given fishing year, NMFS will notify the Team. Following the last mortality or serious injury before the trigger is met, NMFS will also convene the Team by teleconference to discuss the circumstances of the event. For example, if the trigger were three, NMFS would notify the Team of the first mortality or serious injury, and would convene the Team by teleconference after the second observed mortality or serious injury.

ii. M&SI that meets the trigger. If there is an observed false killer whale mortality or serious injury in the deep-set longline fishery inside the U.S. EEZ around Hawaii that meets the established trigger for a given fishing year, NMFS will close the SEZ until the end of that calendar year, and then convene the Team for a meeting. NMFS would reopen the SEZ at the beginning of the next calendar year. The availability of funding may limit NMFS' ability to convene the Team for an in-person meeting; however, NMFS would convene the Team by teleconference or other efficient means until funding becomes available for an in-person meeting. Regardless of whether NMFS has convened an in-person Team meeting, NMFS would reopen the SEZ at the beginning of the next year.

If a closure of the SEZ is triggered, NMFS will notify the fishery and close the area for the specified time period (the rest of the calendar year) through a **Federal Register** notice. The notice will announce that the fishery will be closed beginning at a specified date, which is not earlier than 7 days and not later than 15 days, after the date of filing the closure notice for public inspection at the Office of the Federal Register. The notice will include the specifics of the closure, as well as when and how the SEZ would be reopened.

iii. M&SI after the SEZ is closed. Additional mortalities or serious injuries of false killer whales in the deep-set longline fishery in the U.S. EEZ after the SEZ is closed may warrant review of FKWTRP implementation or effectiveness. Therefore, if during the same calendar year following closure of the SEZ, there is an observed false killer whale mortality or serious injury on a deep-set longline trip anywhere in the U.S. EEZ around Hawaii, then NMFS would again convene the Team to discuss the circumstances of the event and consider the effectiveness of the SEZ closure and the overall FKWTRP. The Team may be convened by teleconference or other efficient means.

c. *Procedures when SEZ was closed during the previous year.* If the SEZ was closed for any part of the previous year as per step b., the following procedures i. and ii. apply for the current year:

i. M&SI below the trigger. Consistent with the procedures in step b. above, after each false killer whale mortality or serious injury in the deep-set longline fishery inside the U.S. EEZ around Hawaii that is below the established trigger in a given fishing year, NMFS will notify the Team. Following the last mortality or serious injury before the trigger is met, NMFS will also convene the Team by teleconference to discuss the circumstances of the event. For example, if the trigger were three, NMFS would notify the Team of the first mortality or serious injury, and would convene the Team by teleconference after the second observed mortality or serious injury.

ii. M&SI that meets the trigger. If there is an observed false killer whale mortality or serious injury in the deep-set longline fishery inside the U.S. EEZ around Hawaii that meets the established trigger for a given fishing year, NMFS will close the SEZ, and then convene the Team for an in-person meeting. NMFS would reopen the SEZ if specific criteria were met (see step d. below). The availability of funding may limit NMFS' ability to convene the Team for an in-person meeting; NMFS may convene the Team by teleconference or other efficient means until funding becomes available for an in-person meeting.

If a closure of the SEZ is triggered, NMFS will notify the fishery and close the area through a **Federal Register** notice. The notice will announce that the fishery will be closed beginning at a specified date, which is not earlier than 7 days and not later than 15 days, after the date of filing the closure notice for public inspection at the Office of the Federal Register. The notice will include the specifics of the closure, as well as conditions NMFS will consider in determining when and how to reopen the SEZ, as set forth below.

d. *Reopening the SEZ.* If the SEZ were closed as per step c., NMFS would reopen the SEZ if one or more of the following criteria were met:

i. NMFS determines, after considering the Team's recommendations and all relevant circumstances that continued closure of the SEZ is not warranted, or otherwise does not serve the objectives of the FKWTRP. Such circumstances might include: The mortality or serious injury was a result of non-compliance with gear requirements, rather than an indication that the existing FKWTRP measures were ineffective; evidence of increased M&SI in other areas, for example, in areas outside the SEZ but within the U.S. EEZ around the Hawaiian Archipelago, or on the high seas in close proximity to the EEZ; evidence of increased interactions with other protected species outside the SEZ; etc.;

ii. In the two-year period immediately following the date of the SEZ closure, the deep-set longline fishery has zero observed false killer whale incidental M&SI within the remaining open areas of the U.S. EEZ around Hawaii;

iii. In the two-year period immediately following the date of the closure, the deep-set longline fishery has reduced its total rate of false killer whale incidental M&SI (including the U.S. EEZ around Hawaii, the high seas, and the U.S. EEZ around Johnston Atoll (but not Palmyra Atoll)) by an amount equal to or greater than the rate that would be required to reduce false killer whale incidental M&SI within the U.S. EEZ around Hawaii to below the stock's PBR at the time of the closure (e.g., if the PBR for the Hawaii Pelagic stock inside the U.S. EEZ around Hawaii was 9.1 at the time of the closure and average annual false killer whale incidental M&SI in the deep-set fishery inside the U.S. EEZ was 13.6, an approximately 33 percent reduction in estimated incidental M&SI for the entire deep-set fishery would be necessary to meet the threshold); or

iv. The average estimated level of false killer whale incidental M&SI in the deep-set longline fishery within the remaining open areas of the U.S. EEZ around Hawaii for up to the five most recent years following implementation of the final FKWTRP is below the PBR for the Hawaii Pelagic stock of false killer whales at that time.

NMFS is including these criteria in regulations. Once NMFS determines that one or more of the criteria was met, NMFS would reopen the SEZ through a **Federal Register** notice. Once the SEZ was reopened, the procedures described in step b. would be followed.

Non-Regulatory Measures

NMFS is implementing the following six non-regulatory measures:

1. Increase the precision of bycatch estimates in the deep-set longline fishery;

2. Notify the Team when there is an observed interaction of a known or possible false killer whale, and provide the Team with any non-confidential information regarding the interaction;

3. Expedite the process for confirming the species identification of animals involved in such interactions and for making serious injury determinations;

4. Make specific changes to the observer training and data collection protocols;

5. Expedite processing the 2010 HICEAS II survey data and provide preliminary results to the Team; and

6. Reconvene the Team at regular intervals.

Though these measures are part of the FKWTRP, they do not place requirements on the longline fisheries and are not being implemented through regulations. These non-regulatory measures are more fully described below.

1. Increase Precision of Bycatch Estimates

NMFS currently requires that observer coverage in the deep-set longline fishery be maintained at an annual level of at least 20 percent, as per the Terms and Conditions of the October 4, 2005 Endangered Species Act Biological Opinion on the deep-set longline fishery (NMFS, 2005b). The Team recommended that NMFS increase observer coverage in the deep-set longline fishery to at least a 25 percent average quarterly coverage rate, provided the increase is funded by the Federal government. Following submission of the Team's recommendations, NMFS conducted an analysis to determine the potential benefit of such an overall increase in observer coverage, in terms of how that coverage increase would increase the precision (i.e., decrease the error) of the bycatch estimate in the fishery. The analysis also evaluated the benefit of that error reduction compared to the cost of the observer coverage increase (McCracken and Boggs, 2010). This analysis found diminishing improvement in the precision of the bycatch estimate when moving from 20 to 25 percent overall coverage. NMFS does not believe any incremental improvement in data precision justifies an increase to 25 percent coverage, given limitations on personnel and resources. Therefore, NMFS is not increasing overall observer coverage in the fishery, but may consider changes in future coverage if circumstances warrant.

However, NMFS intends to implement an increase in *systematic* observer coverage in the deep-set longline fishery (see the proposed rule for a description of the Observer Program's sampling schemes, including systematic and day sampling; 76 FR 42082, July 18, 2011). This is based on the findings that ensuring systematic coverage is at a minimum of 15 percent year-round provides a greater benefit in relation to error reduction than a systematic sample increase from 15 percent to 20 percent, or an overall sample increase from 20 percent to 25 percent (McCracken and Boggs, 2010). Day sampling will continue to be used to meet the additional minimum of 5 percent to attain the targeted 20 percent coverage for the deep-set longline fishery. NMFS is working with the observer contractor to reallocate observers and schedule observer trainings appropriately to ensure enough observers are available to meet the new sampling targets for the deep-set longline fishery. NMFS has already begun to implement these changes. Future changes to observer coverage remain subject to the availability of appropriations, and NMFS may reallocate observer coverage at any time based on operational requirements.

2. Notify the Team of Observed Interactions

The Team requested that NMFS notify the Team when there is an observed interaction of a known or possible false killer whale, and provide the Team with any non-confidential information regarding the interaction. Some of this information is currently available through PIROP's quarterly and annual reports, and non-confidential details on each interaction are available in annual reports documenting serious injury determinations. Because this information may be useful for the Team as it considers the success of the management measures and considers amendments, NMFS will expedite the internal processing and approval of observer data on the trips where false killer whales or possible false killer whales were injured or killed, and provide any non-confidential information to the Team members for their consideration as soon as practical after the event. NMFS has already begun to implement these changes.

3. Expedite False Killer Whale Serious Injury Determinations

For purposes of implementing the FKWTRP, NMFS will expedite serious injury determinations for false killer whales, as recommended by the Team. In January 2012, NMFS finalized a national policy for distinguishing serious from non-serious injury to marine mammals. The policy describes a general annual process for making and documenting injury determinations, and includes seven steps: (1) Initial injury determination, (2) Determination Staff Working Group (comprising NMFS Science Center staff) information exchange, (3) NMFS Regional Office review, (4) report preparation, (5) NMFS Scientific Review Group review, (6) report clearance (within each Science Center), and (7) inclusion of injury determinations in the annual SAR and marine mammal conservation management regimes (NMFS, 2012). This process is fairly slow, and an expedited process is necessary to provide final serious injury determinations closer to real-time to determine whether the trigger for closing the SEZ has been met. The expedited process will also assist the Team in monitoring the success of the FKWTRP in meeting its short-term goal. NMFS will continue to implement the NMFS policy and process for serious injury determinations for all marine mammal interactions on an annual basis, but for false killer whale interactions, NMFS will complete the following additional expedited process on a case-by-case basis:

a. PIROP will prioritize the processing of trips with false killer whale, blackfish, or unidentified cetacean interactions assuming any possibility of being a false killer whale. PIROP will debrief the observer and approve the marine mammal portions of the data as quickly as possible following return of the vessel to port.

b. PIROP will send the approved data to the NMFS Pacific Islands Fisheries Science Center (PIFSC) staff member who makes the marine mammal serious injury determinations (i.e., ''determination staff''), or his/her trained backup. The PIFSC determination staff will then transmit the data to determination staff at the NMFS Southwest and Southeast Fisheries Science Centers (SWFSC and SEFSC) who are familiar with small cetacean injuries in longline fisheries.

d. Determination staff of the three Science Centers will conduct independent review of the data according to the criteria in NMFS' Serious Injury policy, and make preliminary injury determinations. The staff will discuss these determinations and resolve any discrepancies.

e. The PIFSC determination staff will send the determination, supporting data, and the rationale to the Pacific Scientific Review Group (PSRG) and for review and concurrence. PIFSC will also provide the information to the Team coordinator in the NMFS Pacific Islands Regional Office (PIRO) Protected Resources Division (PRD), or a designated backup who is familiar with the Serious Injury policy and criteria, for review.

f. The PIFSC determination staff will consider PSRG feedback, and make the final injury determination.

After these steps are completed, the injury determinations for these cases

will be considered final and will be used for purposes of implementing and monitoring the FKWTRP. These injury determinations will also be considered final for use in the SAR and developing bycatch estimates.

4. Changes to Observer Data Collection Protocol and Training

In its deliberations, the Team relied heavily on analyses of observer program data. The Team noted that specific information that is not currently collected would be useful to support future Team deliberations and to further understand and identify patterns of marine mammal bycatch. The Team recommended that NMFS modify the observer data forms to collect additional information, and also recommended changes to observer training and observer protocol during and after marine mammal interactions. NMFS is implementing the recommended changes, as possible, through appropriate changes to the data collection forms, observer protocol, and/or observer training, but notes that some of the recommendations are already being implemented through existing data forms, protocol, and training, as described in the proposed rule.

5. Hawaiian Islands Cetacean and Ecosystem Assessment Survey 2010 Data

NMFS conducted a cetacean assessment survey in the U.S. EEZ around Hawaii (Hawaiian Islands Cetacean and Ecosystem Assessment Survey, or HICEAS 2010) from August–December 2010. The survey was a collaborative effort between the NMFS PIFSC and NMFS SWFSC, and involved 175 days at sea on two NOAA research vessels. The Team recommended that NMFS expedite the processing of the survey data and provide preliminary results to the Team once the PSRG has completed its review. The Team also recommended that the PSRG complete its review as expeditiously as possible.

NMFS has completed an initial analysis of the HICEAS 2010 data (Bradford et al., 2012) and incorporated the resulting false killer whale abundance analysis into the draft 2012 SAR. NMFS has shared these results with the Team. It is anticipated that updated abundance estimates for all remaining Hawaiian cetaceans will be available in the draft 2013 SARs. NMFS will share information on these updated analyses with the Team as it becomes available.

6. Reconvene Team at Regular Intervals

The Team recommended that NMFS should reconvene the Team every six months for at least two years following implementation of the FKWTRP, and at appropriate intervals thereafter to continue to monitor the progress of the FKWTRP in reaching its short- and long-term goals, and discuss amending the FKWTRP if necessary. The availability of funding may limit the frequency with which NMFS can reconvene the Team for in-person meetings. Therefore, NMFS will reconvene the Team at regular intervals for in-person meetings and/or teleconferences, depending on available funding.

Additional Research and Data Collection

The Team developed a list of 35 research recommendations, which were prioritized within and across four categories: False killer whale biology; longline gear and fishing; shortline and kaka line fishing; and false killer whale assessment. The Team also listed five additional research topics that were not included in the ranked list. Details of all of the recommended research topics can be found in Chapter 9 of the Draft FKWTRP (FKWTRT 2010). The Team noted the iterative process inherent in research and the need to maintain the list of research priorities as a ''living document,'' with changes and additions anticipated over the course of the take reduction process.

NMFS will pursue the additional research and data collection goals outlined by the Team, within the constraints of available funding. Further, NMFS will consider the Team's recommendations for additional research and data collection when establishing NMFS' funding priorities. NMFS will follow the recommendations to the extent that good scientific practice and resources allow. As feasible and appropriate, NMFS will consult and coordinate with the Team during this process.

Monitoring and Measures of Success

The short-term and long-term goals of the FKWTRP are described above (''Goals of the FKWTRP''), and are defined to meet the MMPA requirements for reducing incidental false killer whale incidental M&SI. The Team recognized that there may be other measures of success of the FKWTRP, and identified measures of progress or success for various components of the Draft FKWTRP. For example, measures include fully implementing circle hooks in the deep-set longline fishery; achieving zero false killer whale incidental M&SI in two years within the U.S. EEZ around Hawaii; achieving a reduction of false killer whale incidental M&SI consistent with the percentage needed to move below PBR within the U.S. EEZ around Hawaii; reducing the false killer whale incidental M&SI rate; and making progress in each of the four identified research categories. NMFS, in consultation with the Team, is developing a plan for monitoring the effectiveness of the FKWTRP that incorporates many of these measures of success.

Comments on the Notice of Proposed Rulemaking and Responses

NMFS received 86 comments on the proposed rule from the State of Hawaii's fishery management agency (Department of Land and Natural Resources (DLNR)), the Marine Mammal Commission (MMC), the Western Pacific Fishery Management Council (Council), environmental organizations, commercial fishing organizations, commercial fishermen, and interested members of the public. Of those, 68 were identical, or slightly modified, form letters expressing support for the proposed rule, and 18 contained substantive comments on specific measures or components of the proposed rule. In the text below, NMFS provides a summary of the significant comments, recommendations, and issues raised that relate to this rulemaking, provides responses to them, and identifies any changes to the proposed regulations. Comments related to the draft Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis are summarized and responded to in the final EA/RIR/FRFA that can be found on the Team Web site (*http://www.nmfs.noaa.gov/pr/interactions/trt/falsekillerwhale.htm*), and is available upon request from the Regulatory Branch Chief [see **ADDRESSES**].

General

Comment 1: Numerous commenters (The Humane Society of the U.S. (HSUS), MMC, Earthjustice, Turtle Island Restoration Network (TIRN), and individuals) expressed general support for the FKWTRP, though some commenters noted their support was conditioned by specific changes, clarifications, and/or cautions (discussed in comments below). Commenters noted the protections for false killer whales were long over-due, and recommended immediate implementation of all new protections.

Response: NMFS acknowledges these comments. The FKWTRP is necessary to reduce levels of incidental false killer whale mortality and serious injury in the Hawaii-based longline fisheries, as required by the MMPA.

Comment 2: Several commenters addressed the differences between the Draft FKWTRP (the Team's recommendations) and NMFS' proposed FKWTRP. The Hawaii Longline Association (HLA), the Council, and individual commenters did not support the changes from the Draft FKWTRP to the proposed FKWTRP, and argued that the changes undermined the TRT process and the agreement reached by the Team in July 2010. The Council believes sufficient justification could be offered to support the TRT's consensus plan, rather than diverge from it. Conversely, HSUS and MMC commented that the proposed FKWTRP is largely based on the Team's deliberations and recommendations, and while some provisions differ from the Team's recommendations, HSUS and MMC believe the rationale for most of the changes seem reasonable.

Response: NMFS values the work of the Team in providing consensus recommendations for reducing false killer whale M&SI in the longline fisheries. NMFS' proposed FKWTRP included nearly all of the Team's consensus recommendations, with some important modifications. In the proposed rule, NMFS described and provided specific rationale for all changes from the Team's recommendations, as required by the MMPA. For discussion of changes from the proposed rule, see the ''Changes from the Proposed Rule'' section below, and responses to comments throughout this rulemaking.

Comment 3: MMC commented that the rationale for and implications of not including all proposed FKWTRP regulatory measures together under 50 CFR part 229 are not clear, and noted that this bifurcated rulemaking approach will result in confusion regarding authorities and potential conflicts between the two parts of the regulations. HSUS and MMC recommended that NMFS should either include all FKWTRP regulations under MMPA authority in 50 CFR Part 229, or if they are adopted under MSA authority in 50 CFR part 665, that there be sufficient cross-referencing or independent language such that a change under a fishery management plan will not result in obviating the risk reduction that is needed for false killer whales under the MMPA. In the latter case, MMC recommended language in the final rule specifying that any changes to FKWTRP measures under 50 CFR part 665 follow the same procedures as those required to change FKWTRP measures in 50 CFR part 229, including advance review and consultation with the Team.

Response: NMFS acknowledges that the proposed codification of the FKWTRP regulations has caused unintended confusion. All FKWTRP regulations in 50 CFR Part 229 are issued under MMPA authority. Accordingly, in this final rule, NMFS is codifying all FKWTRP regulations under 50 CFR part 229 to more clearly reflect the authority under which the regulations have been promulgated. In addition, under MSA section 305(d) authority, NMFS has revised the existing regulations in 50 CFR 665.806(a)(2) defining the MHI longline fishing prohibited area so that the boundaries are consistent with the prohibited area required under the FKWTRP.

Comment 4: HLA and the Council commented that the proposed rule does not comply with MSA. They argue that NMFS proposed to amend the current MSA regulations governing the fisheries to implement the proposed FKWTRP's gear requirements and MHI longline fishing prohibited area; however, the rule does not specify whether and how NMFS plans to comply with the MSA statutory provisions and regulations that govern the promulgation of fishery management regulations.

Response: NMFS disagrees with this comment. In this final rule, NMFS issues all take reduction plan regulations under MMPA authority. Specifically, MMPA section 118 requires NMFS to develop and implement a take reduction plan containing conservation measures designed to assist in the recovery or prevent the depletion of strategic stocks that interact with a commercial fishery. Where a stock's incidental M&SI exceeds PBR, section 118 requires that the TRP include measures that NMFS expects will reduce, within 6 months of the plan's implementation, M&SI to a level below PBR. Although in meeting the long-term goals of the TRP, NMFS is authorized to ''take into account'' the economics of the fishery, the availability of existing technology, and existing State or fishery management plans, nothing in MMPA requires NMFS when implementing these TRP regulations to follow MSA procedures or MSA requirements for implementing fishery management plans and plan amendments. However, as indicated above, NMFS has revised the boundaries of the existing longline prohibited area around the main Hawaiian Islands, as defined in 50 CFR 665.806(a)(2), to conform to the prohibited area established under the FKWTRP regulations. This action is taken under NMFS' MSA section 305(d) authority, and is necessary to ensure that existing regulations applicable to the management of the longline fishery remain consistent with all applicable law, including the requirements of the MMPA and this FKWTRP.

Comment 5: The Council questioned whether the addition of new regulatory measures under 50 CFR part 665 as a result of FKWTRP implementation results in inconsistency between the fishing regulations and the Fishery Ecosystem Plan (FEP) for Pacific Pelagic Fisheries of the Western Pacific Region, and whether the FEP will require an amendment to resolve the inconsistency. The Council requested clear direction from NMFS, since an FEP amendment incurs administrative burden on Council resources.

Response: We agree with the Council that under the proposed rule, public confusion might result from the codification of FKWTRP regulations in 50 CFR part 665. Accordingly, the final rule clarifies that because all FKWTRP regulations are issued under MMPA authority, they are being codified in 50 CFR part 229. As indicated above, the existing fishing regulations in 50 CFR 665.806(a)(2), which establish an area that is open to longline fishing seasonally, are inconsistent with the FKWTRP's designation of a year-round longline exclusion zone around the MHI. NMFS' action to revise the boundaries in 50 CFR 665.806(a)(2) is necessary to resolve conflicting regulations and to ensure that the FEP is carried out consistent with all applicable law, including MMPA. However, authority to initiate a change to the MHI longline prohibited area boundary as described in the FEP resides with the Council.

Comment 6: Earthjustice commented that subsequent to publication of the proposed FKWTRP, NMFS amended 50 CFR 665.813 to add a new paragraph (k) that requires longline gear modifications in the South Pacific to reduce turtle interactions. Earthjustice stated that in promulgating the final FKWTRP regulations, NMFS should be careful to renumber the false killer whale provisions accordingly.

Response: In this final rule, NMFS is placing all FKWTRP regulations in 50 CFR part 229, so 50 CFR 665.813 will be unaffected.

Comment 7: HLA and other individuals commented that the FKWTRP is not based on the best available information. These commenters discussed NMFS' abundance estimate and PBR calculation for the Hawaii Pelagic stock of false killer whales, and their use as the basis for the FKWTRP. The commenters state that the abundance

estimate in the final 2010 SAR is outdated and has been shown to be inaccurate based on the sightings data from NMFS' 2010 shipboard survey of the U.S. EEZ around Hawaii. The commenters argue that sightings data from that 2010 survey represent new ''information'' and are currently the best available science, regardless of whether a new abundance estimate has been calculated. The commenters state that the PBR should be considered unknown, as per NMFS' GAMMS, until a new PBR is issued.

Because of these concerns, the commenters argue that NMFS should not issue a final TRP rule that is based on a PBR that derives from a stale and inaccurate population estimate.

Response: When NMFS issued the proposed FKWTRP, the final 2010 SAR was the best available information. The final 2010 SAR reported abundance estimates and PBR calculations based on NMFS' 2002 shipboard line-transect survey. All Team members were advised of the ongoing shipboard survey, and of preliminary data indicating that abundance estimates for the Hawaii Pelagic stock of false killer whales would likely increase some amount. Much of the information from the 2010 shipboard line-transect survey has been analyzed and incorporated into the draft 2012 SAR, including updated abundance estimates and PBR calculations. NMFS is incorporating information in the draft 2012 SAR for consideration in this final FKWTRP, along with other relevant information.

Comment 8: HLA commented that the FKWTRP cannot create requirements with respect to high seas false killer whale interactions. HLA argues that authority extends only to the area for which NMFS has defined and calculated a PBR (here, the U.S. EEZ), and the success of the TRP must be measured by the applicable PBR and corresponding interactions that occur within the range covered by the PBR (i.e., within the U.S. EEZ). HLA states that whether interactions increase or decrease on the high seas has no bearing on whether the U.S. EEZ PBR is being exceeded.

Response: NMFS disagrees. MMPA section 102(a) broadly prohibits the taking of any marine mammal on the high seas by a person or vessel subject to the jurisdiction of the United States, unless such taking is otherwise authorized under MMPA. MMPA section 118 provides an exception to the section 102(a) prohibition by authorizing marine mammal takes incidental to commercial fishing. Specifically, Section 118(c)(3)(D) provides that where an owner or master holds a valid marine mammal authorization issued under the authority of this section, and operates a fishing vessel in accordance with the requirements of Section 118, the owner, master, and crew shall be not be liable for incidental takes of marine mammals while engaged in fishing operations under that authorization. Nothing in MMPA suggests that the requirements and immunities provided for in section 118 should not apply simply because PBR does not exist for the high seas component of a marine mammal stock. Otherwise, incidental take by commercial fishers on the high seas would be illegal take.

Although PBR is currently only calculated for the portion of the Hawaii Pelagic stock residing within the U.S. EEZ around Hawaii, the SAR indicates that the stock is transboundary and its distribution is continuous across the U.S. EEZ boundary. False killer whales from the Hawaii Pelagic stock are seriously injured and killed on high seas waters adjacent to the U.S. EEZ. Accordingly, most of the FKWTRP's measures, including the gear and placard posting requirements, apply wherever a vessel operates, including the high seas. Managing serious interactions within the high seas portion of the Hawaii Pelagic false killer whale stock is essential to the successful implementation of the FKWTRP, and the accomplishment of its conservation objectives under Section 118. The FKWTRP's objectives will not be satisfied if incidental M&SI in the longline fisheries is merely displaced to the high seas portion of the stock.

To ensure that conservation measures of the FKWTRP would not simply displace fishing effort and its corresponding impacts on the Hawaii Pelagic false killer whale from the U.S. EEZ to the high seas, a goal of the FKWTRP is that M&SI of the high seas portion of the Hawaii Pelagic stock does not increase above current levels (e.g., 11.2 false killer whales per year, as of the draft 2012 SAR (Carretta et al., 2012a)). NMFS will continue to monitor false killer whale M&SI following implementation of the FKWTRP. If implementation of the FKWTRP measures results in an increase in false killer whale M&SI on the high seas, NMFS, in consultation with the Team, may consider amending the Plan to revise existing measures and/or require additional take reduction measures.

Comment 9: Earthjustice stated that the proposed FKWTRP never seriously tackles the MMPA's long-term goal of reducing incidental M&SI within five years of the Plan's implementation to insignificant levels approaching a zero M&SI rate.

Response: The FKWTRP is based on the recommendations of the Team and contains measures to reduce the number and severity of incidental interactions between the longline fisheries and false killer whales. NMFS will continue to work with the Team as required by the MMPA and, in consultation with the Team, will monitor the FKWTRP to determine whether it meets the MMPA's short and long-term take reduction goals. We anticipate that this will involve a continuing process of Plan improvement and refinement as we continue to gain valuable information from the Plan's implementation.

Comment 10: Londren-Pitman, Inc. commented that mortalities and ''serious injuries'' should not be lumped together, as ''serious injury'' is largely subjective and not quantifiable, regardless of the level of observer training.

Response: Under regulations and policies that implement MMPA, NMFS is required to consider both mortalities and serious injuries to marine mammals. The MMPA requires NMFS to distinguish between injuries to marine mammals that are serious and those that are non-serious. MMPA sections 117 and 118 specifically direct NMFS to consider both human-caused mortality and serious injury to marine mammals for stock assessments and management of fisheries interactions (e.g., classification on the MMPA List of Fisheries (LOF) and take reduction plans). In January 2012, NMFS issued a final national policy to establish a consistent and transparent process within NMFS for objectively distinguishing serious from non-serious injuries of marine mammals, for applying these criteria to injury cases, and for documenting injury determinations (77 FR 3233, January 23, 2012). The final policy interprets the regulatory definition of serious injury (''any injury that will likely result in mortality'', 50 CFR 229.2) as any injury that is ''more likely than not'' to result in mortality, or any injury that presents a greater than 50 percent chance of death to a marine mammal. Thus, mortalities and serious injuries are considered together when managing marine mammal interactions in commercial fisheries.

Comment 11: HLA objects to certain aspects of NMFS' proposed formal guidance on serious injury determinations.

Response: NMFS' national policy for distinguishing serious from non-serious injuries of marine mammals was finalized and has been in effect since

January 27, 2012, and is outside the scope of this rulemaking.

Comment 12: HLA and individual commenters do not support a serious injury determination process in which the determination is made by a single individual with ''review'' by the PSRG, particularly given the magnitude of the ramifications of a serious injury determination for the fisheries. These commenters recommend that the serious injury determinations for false killer whale interactions be made by a three-person panel composed of neutral representatives from NMFS PIRO's PRD, the Council, and the NMFS PIFSC.

Response: The serious injury determination process has been formalized through a new national policy. Under the process prescribed in the new policy and the expedited version of that process described above (see ''*3. Expedite False Killer Whale Serious Injury Determinations*'' under ''Non-Regulatory Measures''), initial serious injury determinations will be made by a single NMFS PIFSC staff person using the detailed criteria and procedures in the national policy. Each initial injury determination will then be reviewed three times: by a scientist in another NMFS Science Center who is familiar with small cetacean injuries in longline fisheries, by protected resources managers within the NMFS PIRO, and by the PSRG. The multiple levels of review will ensure consistent application of NMFS' serious injury criteria. NMFS believes this decision-making process is sufficiently thorough, while still efficient for purposes of implementing measures of the FKWTRP.

Comment 13: HSUS supports an expedited process for making serious injury determinations, but this should not come at the expense of a robust analysis by responsible scientists, nor should it create a short-changed internal review process.

Response: NMFS is implementing an expedited review process for making serious injury determinations for the purposes of the FKWTRP, as described above (see ''*3. Expedite False Killer Whale Serious Injury Determinations*'' under ''Non-regulatory Measures''). The process will allow NMFS to make the injury determinations in a timely fashion, as necessary for implementing provisions of an SEZ, while providing a structure for robust analysis and multiple levels of review.

Scope

Comment 14: HLA commented that the shallow-set longline fishery should not be included in the scope of the FKWTRP, arguing that false killer whale interactions with this fishery are both insignificant and discountable. HLA also noted that the fishery has 100 percent observer coverage, so there is a high degree of confidence in available information, and a ready and reliable source of ongoing information to alert NMFS should the situation change.

Response: The level of false killer whale M&SI in the Category II Hawaii-based shallow-set fishery is low, but there are documented M&SI of the strategic Hawaii Pelagic stock of false killer whales (0.1 average annual M&SI, as of the draft 2012 SAR (Carretta et al., 2012a)). Since the Category II shallow-set longline fishery interacts with the strategic Hawaii Pelagic stock, a take reduction plan is required as per MMPA section 118(f)(1).

Comment 15: Numerous commenters (HSUS, MMC, TIRN, Earthjustice, and individuals) commented that the FKWTRP should address all commercial fisheries known or suspected of interacting with false killer whales, and representatives of those fisheries should be added to the Team. Particular concern was expressed for nearshore fisheries, which may impact the Hawaii Insular stock. Earthjustice stated that this revision of the scope is needed to comply with the MMPA's command that all commercial fisheries shall reduce incidental M&SI of marine mammals to insignificant levels approaching a zero M&SI rate.

Response: The FKWTRP addresses the commercial fisheries documented to have incidental M&SI of false killer whales—the Hawaii-based deep- and shallow-set longline fisheries. It is the long-term goal of this Plan to reduce the incidental M&SI to insignificant levels approaching a zero M&SI rate. As indicated in the Notice of Establishment of a False Killer Whale Take Reduction Team and Meeting (75 FR 2853, January 19, 2010), there is insufficient information to warrant including other commercial fisheries in the scope of the FKWTRP at this time. NMFS will revise the scope of the FKWTRP and add representatives of those commercial fisheries at a later date, if warranted.

Comment 16: HSUS and Earthjustice expressed particular concern regarding the Hawaii shortline fishery, and the potential that longline fishermen may switch to shortline fishing to avoid having to comply with regulations affecting the longline fisheries. HSUS commented that the potential conversion to shortline fishing could lead to higher rates of false killer whale mortality in a fishery that is poorly monitored and managed. Earthjustice notes the potential for considerable under-reporting of shortline fishing effort.

Response: As indicated in the Notice of Establishment of a False Killer Whale Take Reduction Team and Meeting (75 FR 2853, January 19, 2010), regulation of the shortline fishery is outside the scope of this rule. The shortline fishery is believed to operate with very few participants and with low levels of landings. Comprehensive federal management of the longline fisheries has not, to date, driven participants into shortlining, and NMFS has no reason to believe that future behavior will change. However, in recognition of the potential for longline fishermen to switch to shortline fishing, NMFS will work with Hawaii DLNR to monitor the reported shortline and mixed gear fishing effort, particularly during any closure of the SEZ.

Comment 17: Earthjustice recommended NMFS require shortline fishermen engaged in deep-setting to comply with the gear requirements of the FKWTRP (i.e., hook and branch line requirements).

Response: The shortline fishery is not regulated under this final FKWTRP. See response to comment 16 above.

Comment 18: HSUS, MMC, and Earthjustice stated that the shortline and kaka line fisheries must be monitored by independent observers so that operations and bycatch can be better understood and M&SI in those fisheries are accounted for.

Response: Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. Under the LOF, the shortline fishery is Category II, but the kaka line fishery is Category III. At this time, neither the shortline nor kaka line fishery is actively managed under a fishery management plan, and NMFS' observer program is fully committed to other fisheries. NMFS will continue to work with DLNR within available constraints and resources to improve data collection in these fisheries.

Comment 19: Hawaii DLNR is concerned that the Draft FKWTRP includes recommendations for further assessment of both shortline and kaka line fisheries. DLNR argues that kaka line fishing is not likely to interact with false killer whales, and NMFS should distinguish between the two gear types to prevent kaka line from unnecessarily being lumped in with other listed fisheries and having to comply with a stop fishing order when the false killer whale PBR limit is exceeded.

Response: Although the Team discussed and made recommendations regarding both shortline and kaka line

fisheries, NMFS recognizes that the fisheries may present different levels of risk of hooking and entanglement of false killer whales. The kaka line fishery was added to the LOF as a Category III fishery in the 2011 LOF, and its classification has not changed since it was originally listed. See the proposed (75 FR 36318, June 25, 2010) and final (75 FR 68468, November 8, 2010) 2011 LOF for more information.

The shortline and kaka line fisheries are not subject to the requirements of this final FKWTRP. The longline fishing prohibited area around the MHI does not apply to fisheries other than federally-permitted longline fisheries. Moreover, the SEZ closure, if closed based on exceedance of the trigger (which is based in part on PBR), would apply only to the federally-permitted deep-set longline fishery.

Comment 20: Hawaii DLNR urged NMFS to fully examine the shortline and kaka line fisheries and their impacts to false killer whales before moving to regulate them further.

Response: See our response to Comment 16 above. NMFS is not regulating the shortline fishery or kaka line fishery in this final FKWTRP. NMFS will work with Hawaii DLNR and the Team to gather and evaluate additional information on the impact, if any, of these and other fisheries on marine mammals, and take appropriate action where warranted.

Comment 21: HLA argues that the Hawaii Insular stock of false killer whales should not be included in the scope of the FKWTRP. HLA states that the stock is not strategic. HLA states that there are no confirmed interactions between this stock and Hawaii's longline fisheries, and HLA objects to the prorating of takes in areas that NMFS has identified as the Hawaii Insular stock's range as arbitrary and unscientific. HLA argues that the stock does not qualify for a TRT/TRP process in its own right, nor is there basis for including the stock due to ancillary interactions with a Category I fishery.

Response: The best available information, as presented in the 2011 SAR and in the most recent SAR (draft 2012 SAR), both indicate that average annual incidental M&SI of Hawaii Insular false killer whales in the deep-set longline fishery exceeds the stock's PBR level (Carretta et al., 2012a, b). As explained in the final 2011 and draft 2012 SARs, takes of false killer whales of unknown stock origin within the Hawaii Insular/Pelagic stock overlap zone are prorated, given that no genetic samples are available to establish stock identity for the takes, and both stocks are considered at risk of interacting with longline gear within this region.

In the final 2011 and draft 2012 SARs, the Hawaii Insular stock of false killer whales is designated as a strategic stock, and is incidentally killed or seriously injured in the Category I deep-set longline fishery (Carretta et al. 2012a, b). The stock therefore meets the requirements for inclusion within the scope of the FKWTRP.

Comment 22: HLA states that the deep-set longline fishery does not have a ''high level'' of M&SI across a number of stocks, and the only stock with which the deep-set longline fishery has interactions that are more than discountable is the Hawaii Pelagic stock of false killer whales. HLA argues that because the deep-set longline fishery does not have a high level of interactions across a number of stocks, no non-strategic stocks can be included within the scope.

Response: NMFS reviewed the most recent bycatch estimates for marine mammals incidentally killed or seriously injured in the Category I deep-set longline fishery to determine whether there is a high level of interactions across a number of non-strategic stocks. The fishery has documented interactions with a number of non-strategic marine mammal species and stocks, both within the U.S. EEZ and on the high seas, including false killer whales (Palmyra Atoll stock), Risso's dolphins (Hawaiian stock), common bottlenose dolphins (Hawaii Pelagic stock), Pantropical spotted dolphins (Hawaiian stock), striped dolphins (Hawaiian stock), short-finned pilot whales (Hawaiian stock), and Blainville's beaked whales (Hawaiian stock). The final 2011 SAR (Carretta et al., 2012b) indicate the 5-year average annual M&SI for those seven marine mammal species observed to be taken by the fishery inside the U.S. EEZ around Hawaii (i.e., where PBRs are calculated) range from 0 percent of PBR (i.e., no M&SI inside the U.S. EEZ) to 4.7 percent of PBR, within the insignificance threshold. PBR is currently unavailable for marine mammals on the high seas, and thus the impact of the marine mammal bycatch on the high seas has not been determined. However, overall levels of M&SI of these non-strategic stocks on the high seas are low, at levels similar to those inside the U.S. EEZ around Hawaii. Therefore, NMFS has determined that the Category I deep-set longline fishery does not have a high level of M&SI across a number of non-strategic marine mammal species and stocks, and is not including any non-strategic marine mammal stocks in the scope of this Plan. However, we expect that the Palmyra Atoll stock will still benefit from the Plan since most of the regulatory measures apply to the deep-set fishery wherever it operates.

Comment 23: HLA argues that the Palmyra Atoll stock of false killer whales should not be included in the scope of the FKWTRP. HLA states that the stock is not strategic, and given the insignificant interaction rate, it is debatable whether the deep-set longline fishery can be said to ''interact with'' the stock at all.

Response: For the reasons discussed in the section ''Distribution and Stock Structure of False Killer Whales in the Pacific Islands Region'', and in our response to comment 22, NMFS is removing the Palmyra Atoll false killer whale stock from the Plan's scope.

Comments on Specific Measures in the FKWTRP

Hook Requirements

Comment 24: Numerous commenters (MMC, HSUS, TIRN, individuals) supported the proposed weak circle hook requirements. MMC stated that whether or to what extent weak circle hooks will reduce false killer whale M&SI is unclear, but MMC believes this mitigation measure warrants implementation to determine its effectiveness, particularly given the success of weak hooks in reducing unintended bycatch in other fisheries.

Response: NMFS agrees that weaker circle hooks in the deep-set longline fishery are a promising measure that is expected to reduce the number and severity of false killer whale hooking injuries. However, the 4.0 mm wire diameter circle hooks that were proposed to be required in the fishery need additional research to ensure the effectiveness as a mitigation measure and their ability to retain target catch. Until those hooks can be examined further, NMFS is requiring circle hooks with a maximum wire diameter of 4.5 mm, which are weaker than hooks currently used by approximately 80 percent of the fishery.

Comment 25: Lindgren-Pitman, Inc. stated concerns regarding a lack of engineering and manufacturing science that was included in the research that forms the basis of these proposed regulations, including no specification of design criteria to enable release of a false killer whale and retention of all catch, no testing of alternate hook designs, no specification of failure threshold, and no consideration of metallurgy and manufacturing process, which are most important in characterizing the strength of any given hook. The commenter stated that the

sample size of hooked false killer whales is so low that there is no way to quantify whether or not using weak hooks would limit the take of false killer whales at all. The commenter suggested that ease of enforcement should take a back seat to sound science and an engineering approach when researching alternative gear. The commenter does not support the proposed regulations, and instead supports the status quo.

Response: The Team recommended and NMFS proposed the required use of a hook that was expected to allow release of hooked false killer whales. NMFS does not have information on the pull strength necessary to enable release of a false killer whale, and focused on testing hook types similar to those currently in use by the fleet, but with a weaker bending strength that would allow a large marine mammal to escape. This approach built on the concept of weak hooks that were tested in Gulf of Mexico and Atlantic pelagic longline fisheries. Although we agree with the commenter that there will still be variations in hook designs, failure thresholds, and manufacturing processes, NMFS believes that requiring an overall reduction in wire diameter to 4.5 mm will produce a net positive conservation benefit to the false killer whale. We note that the collective judgment of the Team—which was composed of fishing industry representatives, marine biologists, environmental groups, NMFS, State, and Council employees, and academics—after considering all available scientific and commercial information on the subject, also called for the use of a smaller diameter wire. NMFS believes the hook specifications in this final rule will be sufficient to reduce false killer whale serious injuries, but will monitor their effectiveness as part of the larger FKWTRP monitoring strategy.

Continued research and development of ''gear fixes'' or other technologies will be important for long-term reduction of false killer whale depredation and hooking. NMFS will continue to prioritize gear research to support false killer whale take reduction.

Comment 26: The Council and HLA stated that the proposed maximum 4.0 mm wire diameter requirement is unnecessarily restrictive and would negatively impact the fishery. They argued that the Bigelow et al. (2011) study did not sufficiently demonstrate that there would be no significant impact to the deep-set longline fishery of using circle hooks with 4.0 mm wire diameter. The commenters note that the study was not conducted during the time of year when the largest bigeye tuna are historically caught, and the fish caught during the study period were substantially smaller than fish caught during that same time frame in previous years, and thus the study was not able to confirm whether larger bigeye tuna could be retained on the 4.0 mm wire diameter hooks.

Response: These concerns were discussed at the July 2011 Team meeting and again by a sub-group of the Team representing a cross-section of Team members and interests (see the July 2011 Key Outcomes Memo and the December 13, 2011 call summary for the Weak Hook Work Group, available online at *http://www.nmfs.noaa.gov/pr/interactions/fkwtrt/*). The seasonality of the deep-set fishery's target catch size and value was confirmed in a follow-up analysis by NMFS (Bigelow, 2012). The results of the original study (Bigelow et al., 2011), showing no significant difference in target species catch between the two hook types tested, may not be valid for other parts of the year when landed bigeye tuna are typically larger.

NMFS does not have sufficient information to require the use of circle hooks with a maximum of 4.0 mm (0.157 in) wire diameter in the deep-set fishery. However, as discussed in the preamble, the Team's recommendation of a 4.2 (0.165 in) or 4.0 mm (0.157 in) diameter hook was based on the assumption at the time that the standard diameter in use by the industry was 4.5 mm (0.177 in), rather than the more commonly used 4.7 mm (0.185 in) or 5.0 mm (0.197 in). Accordingly, NMFS is requiring a fleet-wide change to 4.5 mm (0.177 in) wire diameter for circle hooks, so as to achieve a comparable reduction in hook wire diameter based on the updated information.

Comment 27: HLA argued that NMFS has not performed an analysis of the effects of implementation of a 4.0 mm weak hook—on the fishery, on manufacturers, on dealers, and on associated businesses—that is sufficiently thorough, detailed, or otherwise acceptable to justify a major change in gear that will assuredly have unintended consequences.

Response: For reasons described in other parts of this rule (see *''(1) Hook Requirements''* under ''Regulatory Measures'' and comments/responses 24, 26, and 28), NMFS is not requiring that circle hooks have a maximum wire diameter of 4.0 mm (0.157 in) at this time. Instead, consistent with the Team's unanimous findings that requiring circle hooks and reducing wire diameter would benefit false killer whale conservation, NMFS is requiring a maximum wire diameter of 4.5 mm (0.177 in) for circle hooks in the deep-set longline fishery.

Comment 28: The Council and HLA support a maximum wire diameter of 4.5 mm, rather than 4.0 mm. The commenters state that new information indicates 4.5 mm is not the ''standard'' wire diameter as was previously believed, and at least half the vessels in the fleet use hooks with wire diameters greater than 4.5 mm, including some J hooks. Therefore, a 4.5 mm circle hook requirement would mark a significant change in the current fishery, in terms of an overall reduction of hook wire diameter and a complete elimination of J style hooks.

HLA also noted that requiring a maximum of 4.5 mm wire diameter would meet the Team's intent that the hook should be the weakest link in the terminal gear, especially considering that many boats currently use hooks that are stronger than the branch line and wire trace. Further, the Council and Lindgren-Pitman, Inc. argued that false killer whales are capable of straightening circle hooks with 4.5 mm wire diameter, as documented in Bigelow et al. (2011).

Response: NMFS is requiring the maximum wire diameter requirement for circle hooks in the deep-set longline fishery to 4.5 mm (0.177 in), based partly on the information provided by the commenters (which was confirmed by NMFS' discussions with major hook suppliers for the fishery). NMFS agrees that, based on the updated information on the hooks currently used in the fishery, the required use of circle hooks with 4.5 mm (0.177 in) wire diameter is expected to reduce mortalities and serious injuries of hooked false killer whales.

Comment 29: Lindgren-Pitman, Inc. commented that crew safety is a concern, noting that compromising the strength of the gear between the leaded swivel and the fish can be a serious working hazard, and weak hooks are inherently more dangerous than the status quo.

Response: Crew safety is a very important consideration for any fishery management measure. The hooks required by this final rule are stronger than those that were proposed and are already used by a segment of the deep-set fishery. NMFS, and the Team (including longline fishermen), did not identify the use of circle hooks with 4.5 mm wire diameter as a crew safety concern.

Comment 30: Several commenters (TIRN, HLA, individuals) requested additional research on weak hooks to validate and improve their effectiveness. HLA specifically recommended a new

study to assess the effects of using hooks with a wire diameter of less than 4.5 mm (i.e., compare 4.5 mm, 4.2 mm, and 4.0 mm), and based on the results, NMFS should require the deep-set fishery to use the hook with the smallest wire diameter that does not have a substantial impact on the size or value of bigeye tuna.

Response: NMFS agrees that further research is needed to test weak hooks and to determine whether weaker hooks might be used in the fishery. NMFS will prioritize and pursue weak hook research as funding allows.

Comment 31: The Council, HLA, and individuals recommend eliminating the limit on maximum hook size in the deep-set fishery; further, the Council requests that NMFS consider a minimum hook size requirement instead of a maximum. The Council states that the Team's original recommendation concerning hook size in the Draft FKWTRP was only based on the common circle hook size currently found in the fishery, and was not intended to specify maximum or minimum hook sizes. The Council argues that there is no evidence that smaller hooks are less detrimental to false killer whales than larger hooks.

The commenters cite the benefits of larger circle hooks at reducing bycatch rates of protected species (e.g., sea turtles, seabirds, and vulnerable fish species), and state that any hook requirement should not compromise the potential benefits from use of larger hooks, including the ability of fishermen to innovate. Additionally, they stated that if a maximum wire diameter is specified, larger hooks of the same wire diameter are more likely to straighten than smaller hooks due to mechanics of leverage, providing greater potential for false killer whales to free themselves from the hook. However, HLA notes that it is highly unlikely that deep-setting vessels would use hooks greater than 16/0 that are less than 4.5 mm in diameter because they would likely not fish effectively.

Response: NMFS generally agrees with these commenters and is not regulating the size of circle hooks in the deep-set fishery. The proposed maximum size requirement was based on the language in the Draft FKWTRP, and analyses that indicated false killer whales and blackfish are less likely to be hooked or, if hooked, would have fewer deaths and serious injuries on small circle hooks compared to other hook types. These analyses are described in the Draft FKWTRP and Forney et al. (2011). However, they mainly compare the effect of hook shape (i.e., tuna, J, and circle), rather than hook sizes. This is primarily because large (18/0) circle hooks are used very infrequently in the deep-set fishery, and no false killer whales or blackfish have been observed to be hooked on large circle hooks.

NMFS has insufficient information to indicate that the size of the circle hook affects false killer whale hooking rates or injury severity. Although the Team discussed the possibility that it may be more difficult for smaller circle hooks (14/0, 15/0, 16/0) to get around and become embedded in a false killer whale's jaw compared to larger circle hooks, the Team also considered information that larger circle hooks with only a 4.5 mm wire diameter might be more likely to straighten under the pull of a false killer whale. In short, the available information does not convince us that larger circle hooks (18/0) should be prohibited under the FKWTRP.

In addition, NMFS has long recognized the potential of larger circle hooks to reduce bycatch of other protected species. Given these benefits to other protected species, including sea turtles, and the lack of information about adverse effects on false killer whales, NMFS does not want to discourage their use. If fishermen do choose to use larger circle hooks, the FKWTRP regulation regarding maximum wire diameter (4.5 mm) would still apply. Additionally, both large and small circle hooks are significantly weaker than tuna hooks.

The Council suggested that NMFS specify a minimum size for circle hooks in the deep-set fishery, rather than a maximum size. NMFS is not including such a specification in this final rule as it was neither discussed by the Team nor included in the proposed FKWTRP. However, if the FKWTRP regulations result in a switch by the fleet to smaller hooks, and if those smaller hooks show an increased rate of false killer whale M&SI or increased bycatch of other protected species, regulation of minimum hook size may be considered in the future.

Comment 32: TIRN and individuals requested additional research to determine if smaller hooks can be required in the future to better protect false killer whales.

Response: As described in the response to comment 31 above, there is no information to indicate that the use of smaller circle hooks results in injuries to false killer whales that are less serious than larger circle hooks. However, NMFS will continue to collect and evaluate data on circle hook size and false killer whale hooking and serious injury rates to determine whether there is a relationship.

Comment 33: HLA does not support the proposed requirement for hooks to use only round, non-flattened wire. HLA stated that the TRT recommended the use of round wire simply to allow for the wire diameter of some portion of the hook shank to be measured, and noted that effective enforcement of a wire diameter requirement can occur by requiring compliant hooks to contain sufficient round wire to be measured with a caliper or other appropriate gauge. HLA further stated that no circle hooks currently on the market meet this ''non-flattened'' wire requirement.

Response: The proposed regulatory requirement that hooks be made of round wire was taken directly from the Team's recommendations (the Draft FKWTRP). NMFS agrees that the intent of the requirement was to allow for enforcement of the wire diameter regulation. NMFS did not intend this aspect of the hook specifications to preclude the use of circle hooks currently on the market. Therefore, we are requiring that hook shanks need only contain round wire that can be measured with a caliper or other appropriate gauge. This meets the Team's and NMFS' intent without unnecessary restrictions on hook design.

Comment 34: MMC suggested that NMFS consider defining weak hooks based not only on the wire used to make them, but also on the force required to straighten them (e.g., an average of 205 pounds). To be able to enforce such a provision, MMC recommended NMFS test available hooks to determine which meet those standards and provide fishermen with a list of approved hook types and hook manufacturers allowed in the fishery. HLA commented that they do not support specifying a single or a few ''authorized'' hooks, creating a hook ''template,'' specifying the pull strength or required hook materials.

Response: NMFS is not including a regulatory definition for the force required to straighten compliant hooks. Consistent with the Team's recommendation, the aim of the Plan's maximum wire diameter specification is to increase the likelihood that a hooked false killer whale will be able to straighten the hook and release itself without serious injury. We acknowledge that threshold bending strength is unknown, and that a false killer whale's ability to release itself will likely vary according to the circumstances of each individual interaction. Based on NMFS' preliminary testing, we know that in at least some circumstances, a false killer whale can straighten and escape from a 15/0 stainless steel circle hook with a wire diameter of 4.5 mm (0.177 in), which straightens at around 303 pounds

(138 kg) of pull (Bigelow et al., 2011). However, the estimate of those hooks' straightening strength is based on a small number of hooks tested. (For more information, see ''Hook Strength Test Results,'' presented to the Team at the June 2010 meeting; available online at *http://www.nmfs.noaa.gov/pr/interactions/fkwtrt/meeting3.htm*). NMFS does not have sufficient information to require a particular bending strength for circle hooks, so is therefore not including such a specification in regulations.

Comment 35: The Council stated that adverse impacts to the longline industry could be avoided with delayed implementation of the weak hook requirement as well as a gradual phase-in period over a reasonable period of time, noting that this would allow gear suppliers to stock required hooks after the final rule is published, and for vessels to switch over to weak hooks as part of the regular hook replacements resulting from hook loss after each trip, and spread out the one-time cost per vessel over the phase-in period. HLA specifically suggested that any new gear requirement be delayed such that they are effective at least one year after necessary quantities of new gear are acquired by suppliers (i.e., one year plus a number of months to allow for manufacture and distribution of new hooks).

Response: NMFS proposed the required use of hooks that were not currently produced or commercially available, and thus a lengthy delay in implementation of the requirement may have been necessary, as suggested by the commenters. However, as described above (see *''(1) Hook Requirements''* under ''Regulatory Measures'') and in response to comments (e.g., comments/responses 24, 26–28, 31, and 33), NMFS has established specifications that were recommended by the Team for hooks that must be used by the deep-set longline fleet. These hooks are already commercially available, and thus a shorter timeframe is needed for implementation of this measure. The hook requirement will go into effect xx days after this rule is published in the **Federal Register**. NMFS considers this implementation time frame necessary to allow the Plan to reach the short-term goal of reducing M&SI to below PBR levels within six months, and believes this provides adequate time for suppliers to obtain the necessary supply of hooks and for fishermen to change over their gear.

Branch Line Requirements

Comment 36: MMC stated that the thickness of monofilament line may not be a consistent indicator of breaking strength, and a performance-based standard should be considered together with the minimum diameter requirement for longline leaders and branch lines.

Response: NMFS recognizes that the breaking strength of monofilament line may vary based on a number of factors, including age (new vs. used), stretching, storage conditions (e.g., exposure to UV rays), or whether the line has been soaked versus dry when the strength is tested. There may also be differences in breaking strength within a spool of monofilament. In recognition of these differences, and the difficulty in enforcing a performance-based standard, the FKWTRP does not include a performance-based standard for branch lines and leaders. NMFS considers specification of a minimum diameter for monofilament leaders and branch lines to be sufficient.

Deep-setting vessels in the Hawaii-based fleet typically use monofilament branch lines but wire leaders. The wire used is typically stronger than monofilament. However, to ensure that any material used in the branch line or leader is at least as strong as the specified monofilament, NMFS is including a performance standard (minimum breaking strength of 400 lbs (181 kg)) for any materials other than monofilament line.

Comment 37: HLA commented that any requirement for branch line diameter should take effect at least one year after necessary quantities of the new gear are acquired by suppliers.

Response: Monofilament line with a minimum diameter of 2.0 mm is already widely available and used in the fishery. However, NMFS recognizes that it will take fishermen time to change over gear. This change would most efficiently be accomplished at the same time as changing over hooks. Therefore, regulation is effective at the same time as the hook requirement, which is 90 days following publication of this final rule in the **Federal Register**.

Main Hawaiian Islands Longline Fishing Prohibited Area

Comment 38: MMC supports the proposed year-round closure around the MHI, stating that it is necessary to reduce the risk of longline fishing to the Hawaii Insular stock.

Response: NMFS is closing this area to longline fishing year-round in this final rule. In the FKWTRP regulations at 50 CFR 229.37, NMFS is closing the area within the existing February-September boundary (50 CFR 665.806) to longline fishing year-round. NMFS is also revising the existing longline fishing prohibited area regulations at 50 CFR 665.806 by removing the seasonal boundary change, to be consistent the FKWTRP regulations.

Comment 39: HLA disagrees that longline fishing within the seasonally open area may be affecting the Hawaii Insular stock, but HLA believes that the proposed year-round restriction would effectively eliminate any risk of any kind (if any exists at all) from the longline fleet to the Hawaii Insular stock. HLA requested that the rule should recite the Team's statement as such (see p. 60 of the Draft FKWTRP).

Response: The best available information indicates that the Hawaii Insular stock of false killer whales is at risk of interacting with longline fishing gear within the portion of the Hawaii Insular/Pelagic stock overlap zone where longline fishing occurs, and the draft 2012 SAR reports an estimated 0.5 Hawaii Insular false killer whales killed or seriously injured in the deep-set longline fishery each year (Carretta et al., 2012a).

The Team stated in its recommendations to NMFS that a year-round closure of the MHI longline fishing prohibited area would eliminate any risk from the longline fisheries to the Hawaii Insular stock. Although the closure is expected to substantially reduce the risk of longline fishing to the Hawaii Insular stock, we disagree that all risk to the Hawaii Insular stock can be eliminated. NMFS believes that there remains a small risk of incidental interactions with the longline fisheries within the area of the Hawaii Insular/Pelagic stock overlap zone that would remain open to longline fishing.

Longline fishing is already prohibited year-round from the entire core range of the Hawaiian Insular population and a portion of the Hawaii Insular/Pelagic population overlap zone (50 CFR 665.806(a)(2)(ii)), and seasonally in an additional portion of the overlap zone (50 CFR 665.806(a)(2)(i)). This final rule would prohibit longline fishing year-round around the MHI within the current February-September exclusion zone boundary. The boundary is not a uniform distance from shore, but ranges from 78.6 km (42.4 nm) to approximately 200 km (108.0 nm) (Baird, 2009). Longline fishing would be still allowed within approximately 26 percent of the Hawaii Insular/Pelagic population overlap zone.

NMFS believes that false killer whales from the Hawaii Insular and Hawaii Pelagic populations are not uniformly distributed within the overlap zone, but show a gradient: the density of the Hawaii Insular population decreases with increasing distance from shore,

and the density of the Hawaii Pelagic population decreases with decreasing distance to shore (McCracken, 2010; Carretta et al., 2012a). Therefore, false killer whales in the offshore portions of the overlap zone (i.e., in the area where longline fishing would still be allowed) are more likely to be from the Hawaii Pelagic population. Although Hawaii Insular false killer whales would largely be protected from incidental interactions with the longline fisheries, a small risk remains. NMFS expects other proposed measures in the final FKWTRP, including the required use of circle hooks in the deep-set longline fishery, to further mitigate the risk to Hawaiian Insular false killer whales.

Comment 40: HLA stated that the current MHI prohibited area and the proposed MHI prohibited area have different regulatory purposes, so HLA requests that the year-round closure set forth in the proposed rule be identified separately in the regulations implementing the TRP, and the separate bases for each of the exclusion zones be explained in the final rule. HLA noted that this would better reflect the intent of the Team.

Response: NMFS agrees that the original and proposed MHI longline fishing prohibited areas have different regulatory purposes. In this final rule, NMFS is establishing the longline fishing prohibited area under the FKWTRP regulations, with the same boundary as the current February-September MHI longline prohibited area. This final rule specifically notes that the reason for implementing this closure is false killer whale conservation. Additionally, under the authority of the MSA, NMFS is revising the regulations in 50 CFR 665.806 prescribing the existing MHI longline fishing prohibited area by removing the seasonal boundary change. This action will align the boundaries of the MHI longline prohibited with those of the prohibited area established under this FKWTRP, and is necessary to ensure that existing regulations applicable to the management of the longline fishery are consistent with the requirements of the FKWTRP and the MMPA.

Comment 41: HLA noted that the TRT intended that management measures would change as new information and circumstances dictate. HLA therefore recommends that the rule explain the basis for the closure (i.e., the longline fisheries may have some effect on the Hawaii Insular stock and closing the area will eliminate this effect) so that if that assumption changes or additional information calls that into doubt, or if false killer whale interactions are otherwise substantially reduced, the current seasonal contraction of the boundary would be re-implemented.

Response: This final rule explains the basis for the MHI longline fishing prohibited area (see ''*(3) Main Hawaiian Islands Longline Fishing Prohibited Area''* under ''Regulatory Measures''). As noted in response to comment 39, NMFS expects this closure will substantially reduce, but will not eliminate, the impact of longline fisheries on the Hawaii Insular stock. NMFS, in consultation with the Team, will monitor the effectiveness of the FKWTRP in meeting its take reduction goals, and may adapt or amend the FKWTRP in the future as new information on false killer whale populations and the impacts of longline fisheries on the populations becomes available.

Southern Exclusion Zone

Comment 42: HLA objected to many of the SEZ measures as proposed, specifically the way the SEZ deviates from the Team's recommendations. HLA stated that the SEZ provisions recommended by the Team were carefully crafted, fair, the product of delicate compromise, and fully consistent with the MMPA goals, and should be implemented in the FKWTRP.

Response: NMFS proposed SEZ measures that were somewhat different from the Team's recommendations because, given the very low PBR for the Hawaii Pelagic stock of false killer whales at the time the proposed FKWTRP was published, NMFS was concerned that the Team's recommended measures were not sufficient to reduce false killer whale M&SI to below PBR. However, largely due to the increase in PBR for the Hawaii Pelagic stock of false killer whales resulting from the 2010 HICEAS survey, as reflected in the draft 2012 SAR, NMFS is implementing SEZ measures that are consistent with the Team's recommendations. As more fully described in the preamble (see section ''(8) Southern Exclusion Zone Closure''), we believe that the Team's recommendation provides sufficient conservation benefits, given the new PBR. NMFS will continue to evaluate and consult with the Team on refinements to the SEZ trigger/closure that will help respond to potential changes in PBR. If future refinements are necessary, they will be implemented by appropriate rulemaking.

Comment 43: HLA stated that the MMPA's take reduction goals are just goals, not required mandates, and argued that it is arbitrary and capricious for NMFS to craft SEZ provisions based on mechanical and model-driven analyses that treat the MMPA's goals as strict requirements.

Response: The MMPA mandates development, publication, and implementation of take reduction plans, with the goal of reducing take to below specified levels relative to PBR, and ultimately, to insignificant levels. We agree that the take reduction goals are not drafted as mandatory standards, perhaps to reflect Congress' understanding that effective take reduction planning often involves compromise based on conflicting professional judgments, as well as incomplete and uncertain information. Nevertheless, we also believe that a Plan's successful implementation will depend in large part on whether it is reasonably calculated to achieve both the short and long-term goals expressed in Section 118.

The SEZ trigger and closure measures were recommended by the Team as an important component of a Plan for reducing false killer whale M&SI to achieve the MMPA's goals, particularly given the uncertainty of the other measures to reduce M&SI to necessary levels. The SEZ measures provide a mechanism by which to gauge the deep-set longline fishery's observed M&SI in comparison to PBR and to implement a closure as a consequence of exceeding PBR, without the necessity of additional rulemaking to initiate the closure. In this regard, the SEZ trigger and closure measures provide a critical and predictable stopgap if and when other regulatory measures fail to adequately protect false killer whales, as MMPA requires.

Comment 44: TIRN and individuals commented that the determination to close the SEZ is not based on the most transparent and conservative estimate of false killer whale PBR, and recommended the rule be modified to ensure PBR is never exceeded.

Response: The most recent estimate of PBR for the Hawaii Pelagic stock of false killer whales is calculated and presented in the draft 2012 SAR (Carretta et al., 2012a), and is used in the calculation of the trigger for closing the SEZ. Although this PBR value was not available at the time of the Team's recommendations or the proposed rule, both the Team's consensus FKWTRP and the proposed FKWTRP identified a process for closing the SEZ that was based, in part, on a PBR value that would change when new information became available. The SEZ management measures in this final rule, specifically the trigger calculation and reopening criteria, have been revised to be consistent with those recommended by the Team. The trigger calculation and

closure procedures are more straightforward and transparent in specifying a consequence SEZ closure if and when PBR is exceeded by the deep-set longline fishery.

This FKWTRP is designed to reduce false killer whale M&SI to below PBR, and in the longer-term, to insignificant levels approaching a zero M&SI rate. NMFS will monitor the success of the FKWTRP at meeting these goals, and will examine each measure, including the SEZ, to determine its efficacy in reducing M&SI to levels below PBR.

Comment 45: HLA commented that NMFS should consider implementing the SEZ portions of the FKWTRP rule in final after the new PBR is released and after the new gear requirements are phased in. HLA stated that this would allow NMFS to best judge whether the fishery is having an effect on the Hawaii Pelagic Stock that actually results in PBR being exceeded and whether the gear changes are effective.

Response: This final rule is based on the best available information, including the draft 2012 SAR (Carretta et al., 2012a) and its newly calculated estimates of abundance and PBR for the Hawaii Pelagic stock of false killer whales.

Given the 90-day delay in implementation for gear requirements (hook and branch lines), NMFS is implementing the SEZ provisions immediately following the rule's 30-day delay in effectiveness, to ensure that there are take reduction measures in place to protect the false killer whale stocks from additional M&SI while the gear requirements are being phased in. NMFS will monitor false killer whale M&SI following implementation of gear changes to determine whether they are having the intended effect in reducing M&SI.

Comment 46: Earthjustice stated that the SEZ management measures should apply to all commercial fisheries that may interact with false killer whales, including the deep-set and shallow-set longline and shortline fisheries. Earthjustice, TIRN, and individuals specifically noted that M&SI from all commercial fisheries within the U.S. EEZ should count toward the trigger.

Response: The SEZ measures apply only to the deep-set longline fishery, as recommended by the Team and proposed by NMFS. The main reasons for limiting the measures to the deep-set fishery are the fishery's high rate of false killer whale M&SI and level of effort within the U.S. EEZ. The shallow-set longline fishery operates largely outside of the U.S. EEZ around Hawaii, and thus has a low likelihood of interacting with a false killer whale within the U.S. EEZ. In addition, the shallow-set longline fishery, with 100 percent observer coverage, has a low interaction rate with false killer whales. Accordingly, an SEZ closure (within the U.S. EEZ) is not viewed as a necessary measure for reducing false killer whale M&SI in the shallow-set fishery. Therefore, M&SI of false killer whales in the shallow-set longline fishery will not count toward the SEZ trigger, and the shallow-set longline fishery will not be affected by any closure of the SEZ. However, M&SI of false killer whales in the shallow-set longline fishery will still be included in NMFS bycatch estimates and would be presented in the SAR.

The Hawaii shortline fishery is not currently under the scope of the FKWTRP (see comments/responses 15–20 for more information). Therefore, SEZ provisions do not apply to the shortline fishery.

Comment 47: HSUS expressed concern that a closure of the SEZ may result in fishermen converting longline gear to shortline gear and still fish in the area, and that the proposed FKWTRP has no ability to address the possible conversion of gear that could lead to higher rates of mortality in fisheries that are poorly monitored and managed.

Response: NMFS previously addressed a similar but more general comment related to the conversion of longline gear to shortline gear (see comment/response 16). The Hawaii-based deep set fishery is currently subject to a wide range of federal requirements, including catch limits, limited entry requirements, observer coverage, and catch reporting. To date, NMFS is unaware of any movement by fishermen into shortlining on account of increased federal management. NMFS will monitor reported fishing effort in the longline and shortline fisheries, and consider any other available sources of information to gauge whether gear conversion of longline to shortline is occurring as a result of SEZ or other FKWTRP provisions.

Comment 48: The Hawaii DLNR commented that the SEZ closure should not apply to nearshore fisheries, particularly the kaka line fishery.

Response: The SEZ provisions apply only to the deep-set longline fishery. Nearshore fisheries, including the kaka line fishery, are not currently affected by the FKWTRP or implementing regulations.

Comment 49: HLA stated that the proposed rule was not clear about how false killer whale M&SI that occur within the Hawaii Insular/Pelagic stock overlap zone would be counted toward the trigger. The commenter stated that for bycatch estimates, the animal would be prorated based on NMFS' model, and this prorated animal cannot count as a whole interaction for the purposes of the SEZ provisions.

Response: As stated in the proposed rule and repeated in this final rule, for purposes of implementing the SEZ, false killer whales that are mortally or seriously injured in the deep-set longline fishery within the U.S. EEZ around Hawaii will be considered to be from the Hawaii Pelagic stock unless there is information to indicate that the animal belongs to the Hawaii Insular stock. Therefore, false killer whale M&SI that occurs within the Hawaii Insular/Pelagic stock overlap zone would be considered to be Hawaii Pelagic false killer whales, unless photo-identification or genetic analysis can definitively tie the animal to the Hawaii Insular stock. NMFS emphasizes that the rough extrapolations of M&SI and accounting of those M&SI for purposes of implementing the SEZ trigger/closure do not represent the official bycatch estimates for false killer whales in the fishery; the official bycatch estimates are calculated by separate methods and are presented in the annual SARs. While M&SI of false killer whales of unknown stock origin within the Hawaii Insular/Pelagic stock overlap zone are prorated as part of bycatch estimates for the SAR, the prorating methods will not be applied for purposes of implementing the SEZ.

Comment 50: HSUS commented that changes made from the Draft FKWTRP for calculating the SEZ triggers are in keeping with the general intent of the Team's recommendations, but appear more practical for NMFS from a management perspective. HSUS also understands the agency's rationale for changes to the procedures that would lead to either re-opening and/or re-closing a closed area.

Response: NMFS acknowledges the comment.

Comment 51: HLA supports some of the proposed SEZ measures that are consistent with the Team's recommendations, including a trigger based, in part, on PBR (recognizing that PBR can change) and a two-step closure process in which the SEZ may be closed for the remainder of the calendar year if the first trigger is reached and then closed for a longer period of time if a second trigger is reached. HLA commented that a two-trigger approach is essential because it creates an incentive for the fishery to find a solution and gives the other elements of the FKWTRP a chance to prove effective. HLA stated that any SEZ provisions implemented by NMFS

cannot result in an indefinite closure of the SEZ after a single trigger is reached.

Response: NMFS is including the two-trigger approach for managing the SEZ, as recommended by the Team. Also consistent with the Team's recommendations, the trigger in this final FKWTRP is based in part on PBR.

Comment 52: HLA commented that specifying alternative triggers based on a ''floor'' number (of a minimum of two) and a PBR exceedance (for both the first and second triggers), as recommended by the TRT, is essential because they help to account for the fact that the current PBR is not based on the best available data.

Response: The triggers in this final FKWTRP are the same as those recommended by the Team. As noted throughout this rule, the FKWTRP relies on abundance estimates and PBR calculations presented in the draft 2012 SAR, which represents the best available information. Although this PBR value was not available at the time of the Team's recommendations or the proposed rule, both the Team's consensus FKWTRP and the proposed FKWTRP anticipated that PBR would change as new abundance information became available.

Comment 53: HLA stated that the first and second triggers should be identical, as outlined in the Team's consensus Draft FKWTRP. HLA further commented that the second trigger should not be more stringent that the first trigger because a substantial change in the fishery will likely have occurred between the time the first and second triggers are met (e.g., more rigorous captain and crew training, implementation of and experience with new gear requirements, more crew awareness).

Response: The first and second triggers in this final FKWTRP are identical to each other, as recommended by the Team and described above (see ''(a) *Defining the Trigger''* under ''Regulatory Measures''). The triggers are both designed to result in closure of the SEZ if false killer whale M&SI exceeds PBR.

Comment 54: The Council and HLA do not support the approach of tying the second closure to a single additional observed mortality or serious injury because, as proposed, it does not allow for an adjustment of the trigger based on any newly calculated PBR within that timeframe.

Response: NMFS has modified the SEZ trigger and closure scheme for this final FKWTRP to more closely conform to the Team's Draft FKWTRP, such that the second closure is no longer tied to a single observed mortality or serious injury. Furthermore, the SEZ trigger and closure scheme accounts for a changing PBR value.

Comment 55: HLA commented that the rule should include provisions to account for a situation in which the first trigger is reached (and the fishery is closed) based on exceedance of an inaccurate and outdated PBR. HLA noted a potential worst-case scenario of a fishery closure based on a trigger that uses the old PBR, only to learn after the fact that the fishery would not have been closed if the correct PBR had been used as the trigger.

Response: This FKWTRP is based on the best available information, including a newly updated abundance estimate and PBR for the Hawaii Pelagic false killer whale stock, as reported in the draft 2012 SAR. The triggers will be calculated using the most updated estimate of PBR, and revised whenever changes in PBR or observer coverage would change the trigger value.

Comment 56: HLA suggested that the trigger need not be based on a PBR reported in the current SAR, stating that the MMPA does not require that a discrete element of a TRP be tied directly to the SAR.

Response: The MMPA's take reduction goals are tied directly to PBR, which is reported in the SAR. Using the PBR reported in the most recent SAR for calculating the SEZ trigger ensures that decisions are based on the best available information, and is the most effective way to set a trigger that would ensure the FKWTRP is meeting the MMPA-specified goals.

Comment 57: HLA and Earthjustice commented on the false killer whale M&SI that might be observed in the calendar year in which the final rule is published, but before the specified effective date of the final rule. HLA supported only counting toward the trigger those M&SI that occur after the rule is effective, as was proposed. Earthjustice recommended that those observed M&SI should ''count'' toward the trigger, by adjusting the first year's trigger to reflect the percentage of the entire fishing year that remains. Otherwise, Earthjustice argued, M&SI could be allowed to exceed PBR during the first calendar year without triggering a closure of the SEZ.

Response: NMFS is not prorating the trigger for the remainder of the first year, and only those serious injuries or mortalities that occur after this final rule is effective will count toward the trigger. The trigger specifies the total number of observed false killer whale M&SI allowed for an entire calendar year. The SEZ is a stopgap measure, designed to work in concert with other measures in the Plan. NMFS believes that the Plan must be given an opportunity to demonstrate effectiveness, and that fishermen should be encouraged to reduce false killer whale M&SI by changing fishing practices prior to an SEZ closure. For this reason, NMFS will implement the annual trigger for the remaining part of this calendar year.

Comment 58: Earthjustice stated that the proposed trigger and closure implementation would allow levels of M&SI far in excess of PBR to continue indefinitely without ever triggering closure of the SEZ. The commenter argued that the proposed SEZ measures have ''statistical amnesia'' such that if M&SI in a single fishing year approaches, but does not exceed, the total amount of M&SI allowed for a five-year period (i.e., the first trigger is not met), that excessive level of M&SI is ignored when considering whether the SEZ should be closed due to additional M&SI in following years. The commenter stated that the mechanism for closing the SEZ must be revised to account for cumulative M&SI in all of the fishing years included in the five-year average.

Response: NMFS recognizes that the SEZ trigger and closure mechanism in the proposed rule did not adequately account for the possible scenarios described by the commenter, which would have allowed M&SI to exceed PBR without triggering closure of the SEZ. The measures in this final rule are intended to address those cumulative gaps: closure of the SEZ would be triggered upon PBR exceedance in any single year. However, cumulative M&SI, particularly M&SI that occurs inside the U.S. EEZ around Hawaii after the SEZ is closed, is still not fully addressed by these final SEZ regulations. NMFS plans to consult with the Team and consider revisions to the SEZ measures that will better account for cumulative M&SI in future years, under various scenarios.

Comment 59: The Council stated that if the Team's consensus approach for the SEZ (outlined in the Draft FKWTRP) cannot be supported by NMFS, an alternative should be considered in calculating the trigger for the SEZ closure, using a simple cumulative sum scheme. The Council provided a detailed description of the potential implementation of such a scheme. Earthjustice also put forward an alternative approach for the SEZ that considers cumulative M&SI, and provided details on this alternative trigger calculation.

Response: NMFS is substantially implementing the Team's approach for the SEZ as outlined in the Draft FKWTRP. However, NMFS recognizes

that this SEZ approach may not address all possible M&SI scenarios if the Hawaii Pelagic stock's PBR decreases. Additionally, cumulative M&SI, including M&SI that occurs within the U.S. EEZ around Hawaii after the SEZ is closed, is not fully accounted for. NMFS will consider alternative SEZ measures to be proposed in a future rulemaking, following consultation with the Team. NMFS will consider the Council's cumulative sum scheme when developing those alternative SEZ measures.

Comment 60: Earthjustice stated that the proposed rule fails to address the situation where NMFS may have delayed publication of the closure trigger. Earthjustice recommends revising the regulations to provide that, if the Assistant Administrator of NMFS does not publish the trigger prior to the start of the fishing year, a formula would apply, and the trigger would remain in place until the Assistant Administrator publishes a trigger based on the factors in the proposed regulation.

Response: In the revised SEZ measures of this final rule, NMFS establishes the trigger as two observed false killer whale serious injuries or mortalities in the deep-set longline fishery in the U.S. EEZ around Hawaii. This trigger will remain in effect until NMFS publishes a new trigger in the **Federal Register** to supersede the existing trigger. Trigger publication is not required prior to the beginning of each fishing year.

Comment 61: Earthjustice stated that the proposed rule fails to account for potential substantial declines in observer coverage, and suggested that regulations should require prompt publication of a new trigger if actual coverage declines enough to alter the trigger value.

Response: Observer coverage levels are specified on an annual basis per the terms of a contract with the company that provides observer services for PIROP. Observer coverage is therefore unlikely to change during the year such that it would affect the value of the annual trigger for the SEZ. However, in this final rule, NMFS revised regulations that specify the procedures for calculating and publishing the trigger for the SEZ. The final regulations state that the trigger published in the **Federal Register** will remain in effect until superseded by publication of a revised trigger. NMFS would publish a revised trigger if and when the values of annual observer coverage or PBR of the Hawaii Pelagic stock change such that the trigger value would be altered.

Comment 62: Earthjustice stated that the proposed regulations do not set a deadline for the Assistant Administrator to publish notice of a closure of the SEZ, or to set an outer limit to the delay in closing the SEZ following the notice's filing. The commenter stated that the regulations should mandate that the Assistant Administrator publish the notice as expeditiously as possible following the observed M&SI that meets the trigger, and, in any event, no later than 30 days after the trigger has been met. The commenter also stated that the regulations should specify that the closure should take effect no later than 15 days after the closure notice is filed.

Response: Closure of the SEZ depends on the ability to confirm the species identification of the false killer whale involved in the interaction and the serious injury determination. While NMFS will attempt to expedite these processes, other factors beyond NMFS' control may also affect the timing of the analysis. For example, a false killer whale may be taken during an early set of a deep-set fishing trip, and the vessel may not return to port for several weeks after the interaction occurred. For this reason, NMFS cannot set a deadline in regulations for publication of notice of an SEZ closure. However, NMFS will endeavor to complete the process and publish notice of the closure as expeditiously as possible.

While NMFS is not specifying the maximum time period for publishing the notice of SEZ closure after the observed false killer whale serious injury or mortality event that meets the trigger, NMFS is specifying 15 days as the maximum time period between publishing the notice of SEZ closure in the **Federal Register** and the effective date of the closure.

Comment 63: HLA and the Council commented that the FKWTRP regulations should include the SEZ reopening criteria that were specified in the Draft FKWTRP. HLA noted that the scenarios (represented by criteria) developed by the Team (and described in the Draft FKWTRP) are very narrow and would only be met if there were real progress being made regarding false killer whale interactions in the fishery. HLA also stressed that reopening criteria, even if stringent, would provide important incentives to the fishery to innovate and discover other solutions. The Council suggested that NMFS could include the Team-recommended reopening criteria in the regulations while also including language that allows for the consideration of other scenarios not considered by the Team.

Response: In this final rule, NMFS is including the SEZ reopening criteria specified by the Team in the Draft FKWTRP. In developing the proposed rule, we were concerned that the reopening criteria should reserve sufficient discretion in NMFS to respond to circumstances and exigencies not anticipated by the closure, such as increased M&SI in other fishing areas. After reconsideration of the Team's recommendations in the Draft FKWTRP, NMFS is satisfied that they address those concerns.

Comment 64: MMC and Earthjustice commented that NMFS should reopen the SEZ only when it can provide assurance that PBR will not be exceeded. Earthjustice recommended regulations that preclude the Assistant Administrator from reopening until and unless the average extrapolated M&SI level in the years since implementation of the FKWTRP regulations—or the most recent five-year period, whichever is shorter—is lower than PBR.

Response: The reopening criteria specified by the Team (in the Draft FKWTRP) and included in this final rule, if met, would provide information that false killer whale M&SI is being reduced to below PBR, annually and over time (e.g., five-year average). In fact, one of the reopening criteria is that the average estimated Hawaii Pelagic false killer whale M&SI for the deep-set longline fishery for up to the five most recent years following Plan implementation is below the stock's PBR level. The criteria will ensure that the SEZ will remain closed until data show that meaningful M&SI reductions are being achieved.

The SEZ, in combination with the other measures of this FKWTRP, is expected to reduce false killer whale M&SI to below PBR, and eventually to insignificant levels. However, closure of the SEZ, by itself, will not ensure PBR will not be exceeded, given that false killer whale M&SI may still occur in the deep-set longline fishery in other areas of the U.S. EEZ around Hawaii that are still open to longline fishing. The SEZ must be managed adaptively. Therefore, NMFS must retain sufficient discretion to reopen the SEZ if, after consultation with the Team, NMFS determines reopening is warranted (see 50 CFR 229.37(e)(7)(i)). The Team recommended this criterion for cases in which M&SI indicates new, different, or additional management measures may be required to meet the take reduction goal. For example, the SEZ closure could result in redistribution and concentration of fishing effort within the U.S. EEZ to an area that may have a higher temporary density of false killer whales, and thus a higher likelihood of false killer whale interactions. If the

SEZ closure results in an increased rate of false killer whale M&SI within the U.S. EEZ, the area may need to be reopened and alternative management measures explored.

Comment 65: The MMC recommended that, similar to a PBR-based formula for defining the trigger to close the SEZ, NMFS should adopt in regulations a corresponding PBR-based formula to determine when the SEZ should be reopened, which would ensure PBR will not exceeded.

Response: The reopening criteria specified in this final rule are mainly based on comparisons of the deep-set longline fishery's estimated false killer whale M&SI to the Hawaii Pelagic false killer whale stock's PBR. They allow reopening of the SEZ only when M&SI is less than PBR for a specific period of time. As stated in this final rule (see ''*(8) Southern Exclusion Zone Closure*'' under ''Regulatory Measures''), NMFS will consider revisions to the SEZ in a future rulemaking. NMFS may consider a PBR-based formula for defining an SEZ reopening trigger in a future iteration of the SEZ.

Other

Comment 66: MMC recommended that NMFS adopt and implement all of the proposed non-regulatory measures referenced in the proposed rule.

Response: NMFS is including all proposed non-regulatory measures in this final rule, and has already begun implementation of many of these measures.

Comment 67: TIRN and individuals recommended more research to identify additional fishing areas for closure and reduced deep-set longline fishing effort to ensure recovery of false killer whales.

Response: NMFS, in consultation with the Team, will monitor the FKWTRP and determine whether it is meeting its short- and long-term goals. As part of this monitoring, NMFS and the Team will evaluate whether fishery time/area closures are effective in reducing mortalities and serious injuries of false killer whales. At this time, the FKWTRP does not include reductions in fishing effort.

Changes From the Proposed Rule

This section provides a summary of the changes from the proposed rule to this final rule. More detail on the changes and rationale can be found in the ''Regulatory Measures'' and ''Comments on the Notice of Proposed Rulemaking and Responses'' sections above.

Scope. The non-strategic Palmyra Atoll stock of false killer whales was removed from the scope of this Plan because it was determined that the threshold specified in the MMPA for including non-strategic marine mammal stocks in a take reduction plan (i.e., a Category I fishery has a ''high level'' of M&SI across a number of such marine mammal stocks), MMPA section 118(f)(1)) was not met.

Regulations. This final rule codifies all FKWTRP regulations at 50 CFR Part 229, rather than splitting them into 50 CFR Parts 665 and 229. The authority under which the regulations are promulgated remains the MMPA.

Hook requirements. Three aspects of the hook requirement for the deep-set fishery were changed from the proposed rule. First, NMFS removed the size specification; NMFS had proposed that the circle hooks must be size 16/0 or smaller. For the reasons described above, NMFS has insufficient information to conclude that larger (18/0) circle hooks present a greater risk of M&SI to false killer whales. Second, NMFS is requiring a maximum wire diameter size of 4.5 mm (0.177 in) rather than 4.0 mm (0.157 in), as originally proposed. However, the 4.5 mm (0.177 in) requirement is still expected to result in an overall decrease in wire diameter for most fishermen. Third, NMFS had proposed that the entire hook shank be made of round (non-flattened) wire. This final rule requires that only the hook shank contain round wire that can be measured with calipers.

MHI Longline Fishing Prohibited Area. Rather than revising the existing regulations prescribing the longline fishing prohibited area to remove the seasonal boundary change, NMFS is implementing in FKWTRP regulations in 50 CFR Part 229 a longline prohibited area identical in boundary to the current February-September boundary. This change is necessary to clearly identify the intent of the closure area and the authority under which it is being promulgated. NMFS is also revising the boundaries of the MHI longline prohibited area in the existing regulations in 50 CFR part 665 to be consistent with the FKWTRP regulations.

Southern Exclusion Zone. Provisions specifying the boundaries of the SEZ, the concept of using observed false killer whale M&SI in the deep-set longline fishery to trigger a closure in close to real time, and the use of fishing year (i.e., calendar year) cycle instead of ''Plan Years'' remain the same as originally proposed, though NMFS made minor changes to the description of the boundaries for ease of understanding. The trigger calculation and procedures for opening and closing the SEZ were changed to substantially conform to the recommendations of the Team outlined in the Draft FKWTRP. Additionally, criteria for reopening the SEZ are specified in regulation, consistent with the Team's recommendation.

Classification

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the State of Hawaii. This determination was submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act (CZMA). A letter from the State of Hawaii Coastal Zone Management Program stating concurrence with NMFS' CZMA consistency determination was received September 14, 2011.

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

NMFS prepared a final environmental assessment for this action that discusses the impact on the environment as a result of this final rule. The Preferred Alternative (the final action) is expected to have beneficial effects on false killer whales and other protected species due to potential reductions in interactions and/or injury severity from use of circle hooks with 4.5 mm (0.177 in) wire diameter or less, minimum diameter for monofilament branch line, and closed areas; increased precision of bycatch estimates to better inform management and facilitate adaptive management; and the potential for increased post-interaction survival of entangled or hooked marine mammals due to better training in handling/release, captains' supervision of interactions, crew notification of captains when a marine mammal is hooked or entangled, and posting of handling/release guidelines on the vessel. Little to no effect on target and non-target species is expected, given current spatial patterns of fishing, likelihood of fishing effort redistribution rather than effort reductions following area closures, the highly migratory nature of the stocks, and existing fishery management measures (e.g., catch limits). No effects to the physical environment, including designated Essential Fish Habitat, Habitat Areas of Particular Concern, Critical Habitat, or physical features are expected. Potential effects to the socioeconomic environment include costs to the regulated community for replacement of fishing gear, increased travel time and fuel costs, increased certification requirements, and potential reduced revenue if area closures result in reduced fishing effort; potential

reductions in revenue and income of fishing gear suppliers due to some gear inventory being unsellable to the Hawaii-based longline fisheries; direct and indirect beneficial quality of life effects on groups that value the false killer whale, particularly scientists and educators and members of the present and future generations of the general public that value marine mammal conservation, with potential benefits to wildlife viewers and to non-longline commercial fisheries or recreational/subsistence fisheries if target fish population abundance rises.

Based on the analysis presented in the final environmental assessment, NMFS determined that the action will not significantly impact the quality of the human environment, and all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an environmental impact statement for this action was not necessary. Copies of the final environmental assessment and Finding of No Significant Impact are available on the Team Web site (*http://www.nmfs.noaa.gov/pr/interactions/trt/falsekillerwhale.htm*), and are available upon request from the Regulatory Branch Chief [see **ADDRESSES**].

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

NMFS prepared a final regulatory flexibility analysis (FRFA), pursuant to section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that describes the economic impact this final rule will have on small entities. The analysis is included as Chapter 6 of the combined Final Environmental Assessment (EA), Regulatory Impact Review (RIR), and FRFA. A description of the need for and objectives of the rule; a summary of significant issues raised by public comments in response to the initial regulatory flexibility analysis (IRFA), summary of the agency's assessment of such issues, and statement of changes made in the proposed rules as a result of such comments; a description and estimate of the number of small entities to which the rule will apply; a description of the projected reporting, recordkeeping, and other compliance requirements of the rule; and a description of the steps the agency has taken to minimize the economic impact on small entities are included in the FRFA. A summary of the analysis follows. The full analysis is available on the Team Web site or by request from the Regulatory Branch Chief [see **ADDRESSES**].

Need for and Objectives of the Rule

The action being addressed is the implementation of the FKWTRP, pursuant to section 118(f) of the MMPA, to reduce incidental M&SI of two stocks of false killer whales in the Category I Hawaii-based deep-set longline fishery and the Category II Hawaii-based shallow-set longline fishery. This action is needed because incidental M&SI levels for these stocks in these fisheries exceed the thresholds established under the MMPA. These levels are therefore inconsistent with the mandates of the MMPA, and must be reduced.

Comments on the IRFA and Changes to the Analysis in Response

Four public submissions were received that contained comments on the Draft EA–RIR–IRFA, including comments specific to the IRFA's analysis of economic impacts to small businesses, as well as comments on impacts analyzed in other sections of the document. These comments are summarized and responded to in Appendix A of the combined Final EA–RIR–FRFA. In general, the comments on the IRFA (i.e., those related to economic impacts to small businesses, see comments 16–18 in Appendix A of the Final EA–RIR–FRFA) requested that NMFS provide a more detailed analysis of impacts of the proposed regulations on small businesses and small vessels. Additionally the Office of Advocacy at the Small Business Administration requested NMFS identify and provide analysis of alternatives to the rule that could further minimize costs to affected small businesses. In response to these comments, NMFS updated and revised the FRFA analysis with respect to potential profitability impacts on the fleet, especially for those vessels already operating with thin profit margins, and to the potential for varying levels of impacts by vessel size class. NMFS also added a discussion of alternatives to the rule that were considered but rejected.

Directly Regulated Small Entities

The FRFA evaluated impacts of implementation of the final rule (the Preferred Alternative) on small entities. The number of longline vessel operations was identified from the list of Hawaii longline limited access permit holders. The maximum number of active vessels in Hawaii's longline fleet in the last 5 years is 129. Given that these vessels are owned by 88 individuals, it is assumed based on available data that the fleet is made up of 88 independently-owned businesses. There is only one business with 14 vessels that may not meet the criteria of a small business. Therefore, the analysis identifies 87 small businesses that are anticipated to be directly regulated by the alternatives considered. Of these small businesses identified, 68 businesses own 1 vessel each, 15 businesses own 2 vessels each, 2 businesses own 3 vessels each, 1 business owns 5 vessels, and 1 business owns 6 vessels. For the purpose of this analysis, it is assumed that all these small business are associated with the deep-set longline fishery.

Estimated Impacts to Small Entities

The Preferred Alternative is not expected to generate benefits to the small businesses in the longline fishery, since it would further restrict the location of longline fishing and require the use of specific gear, additional training, and response to marine mammal interactions.

Costs associated with the Preferred Alternative stem from labor and material costs of replacing hooks and monofilament branch lines; additional travel costs (fuel and time) of fishing outside the MHI longline exclusion zone during the time it is currently open to longline fishing and outside the SEZ if the closure is triggered; annual cost of Protected Species Workshop certification of operators and owners; and/or potential reduced revenue due to reduced catch or fishing effort. Initial, one-time costs would be expected to range from $3,000 to $5,000 per business for the 68 businesses owning 1 vessel each, to $17,000–$28,000 for the single business owning 6 vessels. Annual ongoing costs would be expected to range from $700 to $32,000 per business for the 68 businesses owning 1 vessel each, to $4,000–$190,000 for the single business owning 6 vessels. Cost per business for the small number of vessels owning between 2 and 5 vessels would be expected to fall within the ranges identified above. Average annual ongoing costs vary considerably depending on the duration of a potential Southern Exclusion Zone closure. Individual business costs may be higher or lower than the range described here depending on several factors, particularly (1) location of current longline fishing trips (if a vessel currently fishes in an area that will be closed by the FKWTRP, costs will be higher for that vessel), and (2) current gear use (if a vessel would need to change hooks or branch line to meet the Preferred Alternative's gear requirements, costs will be higher for that vessel).

The effects of the Preferred Alternative on small businesses will depend on the profitability of these

businesses, which is difficult to quantify due to uncertainty and volatility in revenue and cost structure over time, as well as uncertainty regarding the actual costs of the FKWTRP, particularly if the SEZ area closure were triggered. Recent profit data are not available, but it is likely that the overall profitability has decreased since 2000 due to rising operating costs (O'Malley and Pooley, 2003). Data from 2000 also suggest that profitability in the fleet varies by vessel size, and that owners of small vessels may already be marginally profitable. Those vessels could be most affected by the potential increased costs of the Preferred Alternative.

Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

No additional reporting, recordkeeping, and other compliance requirement are anticipated for the affected small businesses as a result of the rule.

Evaluation of Significant Alternatives to the Rule and Steps Taken To Minimize Economic Impacts on Small Entities

In addition to the Preferred Alternative, the FRFA formally considered two other alternatives. Implementation of a ''No Action'' alternative is not a viable option because it would not be consistent with the objectives of the action and would be contrary to MMPA requirements to reduce false killer whale M&SI to appropriate levels. Alternative 3 would close the U.S. EEZ around Hawaii to longline fishing year-round.

The complete closure of the U.S. EEZ around Hawaii to longline fishing under Alternative 3 would be expected to incur more significant overall annual costs to small businesses, although no one-time capital costs are anticipated. These costs are associated with the opportunity cost of increased travel time to fishing grounds outside of the U.S. EEZ, and additional fuel costs for that travel. Annual ongoing costs associated with implementing Alternative 3 range from $74,000 to $88,000 per business for the 68 businesses owning 1 vessel each, to $443,000–$527,000 for the single business owning 6 vessels. Cost per business for the small number of vessels owning between 2 and 5 vessels would be expected to fall within the ranges identified above.

NMFS also considered alternatives that could further minimize economic costs to the affected small businesses while still achieving MMPA objectives. These focused on alternatives to, or variations of, the measures in the Preferred Alternative that have the largest potential costs to the longline industry: the weak circle hook requirements and the Southern Exclusion Zone. Specifically, NMFS considered a range of implementation timetables for implementation of the weak circle hook requirement, ranging from one month to six months. Although a six-month implementation timeline for the circle hook requirement, either for all longline vessels or for a particular size class of vessels, may allow a minimal cost savings for those vessels, NMFS rejected this alternative because it would likely impede achievement of the MMPA's goal of reducing M&SI below PBR within 6 months of Plan implementation. The Preferred Alternative specifies an intermediate 90-day timetable that will allow gear suppliers to acquire a sufficient supply of hooks and fishermen to change over their gear, and still implement the measure in time to demonstrate effectiveness. It may result in a small cost savings to fishermen compared to an immediate implementation of the requirement. Accordingly, NMFS concludes that the 90 day implementation period appropriately minimizes the rule's burden on small entities while still achieving MMPA objectives.

NMFS also considered alternative implementation of the SEZ measures that would have separate triggers or closures for vessels of different size classes. NMFS rejected these alternatives mainly because the sustainable bycatch threshold (PBR) for Hawaii Pelagic false killer whales is so low that it would be impracticable to further apportion the trigger among different sectors of the fleet, by vessel size or any other characteristic. Similarly, NMFS cannot consider an exemption from the SEZ closure for small vessels, given the low PBR level and the equal probability that a vessel of any size may incidentally injure or kill a false killer whale.

After careful examination of the best available scientific data on false killer whales, NMFS finds that only the Preferred Alternative and Alternative 3 had the potential to meet the stated objectives of the Take Reduction Plan, consistent with MMPA requirements. Alternative 3 was not selected because it would impose substantially greater economic impacts to small entities than the Preferred Alternative, and it has not been determined to be necessary to achieve MMPA objectives. NMFS believes that implementation of the Preferred Alternative will achieve the requirements of the MMPA while minimizing economic impacts to small businesses to the extent practicable.

References Cited

A list of all references cited in this final rule may be found on the Team Web site (*http://www.nmfs.noaa.gov/pr/interactions/trt/falsekillerwhale.htm*), and is available upon request from the Regulatory Branch Chief (see **ADDRESSES**).

List of Subjects

50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals.

50 CFR Part 665

Administrative practice and procedure, Fisheries, Hawaii, Longline, Marine mammals.

For the reasons set out in the preamble, 50 CFR chapters II and VI are amended as follows:

50 CFR CHAPTER II

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to reads as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.3, effective December 31, 2012, add and reserve paragraph (v), and add new paragraphs (w) through (y) to read as follows:

§ 229.3 Prohibitions.

* * * * *

(v) [Reserved]

(w) It is prohibited to fish with longline gear in the Main Hawaiian Islands Longline Fishing Prohibited Area, as defined in § 229.37(d)(1) .

(x) It is prohibited to deep-set in the Southern Exclusion Zone, as defined in § 229.37(d)(2), during the time the area is closed to deep-set longline fishing pursuant to § 229.37(e).

(y) It is prohibited to fish with longline gear from a vessel registered for use under a Hawaii longline limited access permit in violation of the marine mammal handling and release requirements at § 229.37(f).

■ 3. In § 229.3, effective February 27, 2013, add new paragraph (v) to read as follows:

§ 229.3 Prohibitions.

* * * * *

(v) It is prohibited to deep-set from a vessel registered for use under a Hawaii longline limited access permit unless the vessel complies with the gear requirements specified in § 229.37(c)(1) and (c)(2) .

* * * * *

■ 4. In subpart C, effective December 31, 2012, add a new § 229.37 to read as follows:

§ 229.37 False Killer Whale Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the False Killer Whale Take Reduction Plan to reduce mortality and serious injury of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales in the Hawaii-based deep-set and shallow-set pelagic longline fisheries. The requirements in this section apply to vessel owners and operators, and vessels registered for use with Hawaii longline limited access permits issued under § 665.801(b) of this title.

(b) *Definitions.* In addition to the definitions contained in § 229.2, terms in this section have the following meanings:

(1) *Deep-set or Deep-setting* has the same meaning as the definition at § 665.800 of this title.

(2) *Longline gear* has the same meaning as the definition at § 665.800 of this title.

(c) [Reserved]

(d) *Prohibited area management.* (1) Main Hawaiian Islands Longline Fishing Prohibited Area. Longline fishing is prohibited in the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinated in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) Southern Exclusion Zone. Deep-set longline fishing is prohibited in the Southern Exclusion Zone when the zone is closed to protect false killer whales pursuant to the procedures outlined in paragraph (e) of this section. The Southern Exclusion Zone is the portion of the EEZ around Hawaii bounded by 165° 00′ W. longitude on the west, 154° 30′ W. longitude on the east, the Papahanaumokuakea Marine National Monument and the Main Hawaiian Islands Longline Fishing Prohibited Area on the north, and the EEZ boundary on the south.

(e) *Southern Exclusion Zone trigger and procedures.* (1) The Assistant Administrator will publish in the **Federal Register** the expected observer coverage for a fishing year, the potential biological removal level for the Hawaii Pelagic stock of false killer whales, and the associated trigger calculated using the specifications in paragraph (e)(2) of this section. This trigger will remain in effect until superseded by publication of a revised trigger.

(2) As used in this section, *trigger* means the number of observed false killer whale mortalities or serious injuries in the deep-set longline fishery that occur in the EEZ around Hawaii, and that serves as the bycatch threshold for closing the Southern Exclusion Zone to deep-set longline fishing. The trigger is calculated as the larger of these two values:

(i) Two; or

(ii) The smallest number of observed false killer whale mortalities or serious injuries that, when extrapolated based on the percentage observer coverage in the deep-set longline fishery for that year, exceeds the Hawaii Pelagic false killer whale stock's potential biological removal level.

(3) Unless otherwise subject to paragraph (e)(4) of this section, if there is an observed false killer whale mortality or serious injury in the EEZ around Hawaii on a declared deep-set longline trip that meets the established trigger for a given fishing year, the Southern Exclusion Zone will be closed to deep-set longline fishing until the end of that fishing year.

(4) If during the same calendar year following closure of the Southern Exclusion Zone in accordance with paragraph (e)(3) of this section, there is one observed false killer whale mortality or serious injury on a declared deep-set longline trip anywhere in the EEZ around Hawaii, then NMFS shall immediately convene the False Killer Whale Take Reduction Team.

(5) If in the subsequent calendar year following closure of the Southern Exclusion Zone in accordance with paragraph (e)(3) of this section, there is an observed false killer whale mortality or serious injury in the EEZ around Hawaii on a declared deep-set longline trip that meets the established trigger for a given fishing year, the Southern Exclusion Zone will be closed to deep-set longline fishing until the area is reopened by the Assistant Administrator as per criteria in paragraph (e)(7) of this section.

(6) Upon determining that closing the Southern Exclusion Zone is warranted pursuant to the procedures in paragraphs (e)(1) through (e)(5) of this section, the Assistant Administrator will provide notice to Hawaii longline permit holders and the False Killer Whale Take Reduction Team, publish a notice in the **Federal Register**, and post information on the NMFS Pacific Islands Regional Office web site. The notice will announce that the fishery will be closed beginning at a specified date, which is not earlier than 7 days and not later than 15 days, after the date of filing the closure notice for public inspection at the Office of the Federal Register.

(7) *Reopening criteria.* If the Southern Exclusion Zone is closed pursuant to the procedure in paragraphs (e)(1) through (e)(6) of this section, the Assistant Administrator would reopen the Southern Exclusion Zone if one or more of the follow criteria were met:

(i) The Assistant Administrator determines, upon consideration of the False Killer Whale Take Reduction Team's recommendations and evaluation of all relevant circumstances, that reopening of the Southern Exclusion Zone is warranted;

(ii) In the 2-year period immediately following the date of the Southern Exclusion Zone closure, the deep-set longline fishery has zero observed false killer whale incidental mortalities and serious injuries within the remaining open areas of the EEZ around Hawaii;

(iii) In the 2-year period immediately following the date of the closure, the deep-set longline fishery has reduced its total rate of false killer whale incidental mortality and serious injury (including the EEZ around Hawaii, the high seas, and the EEZ around Johnston Atoll (but not Palmyra Atoll) by an amount equal to or greater than the rate that would be required to reduce false killer whale incidental mortality and serious injury within the EEZ around Hawaii to below the Hawaii Pelagic false killer whale stock's potential biological removal level; or

(iv) The average estimated level of false killer whale incidental mortality and serious injury in the deep-set longline fishery within the remaining open areas of the EEZ around Hawaii for up to the 5 most recent years is below the potential biological removal level for the Hawaii Pelagic stock of false killer whales at that time.

(8) Upon determining that reopening the Southern Exclusion Zone is warranted pursuant to the procedures in paragraph (e)(7) of this section, the Assistant Administrator will provide notice to Hawaii longline permit holders and the False Killer Whale Take Reduction Team, publish a notice in the **Federal Register**, and post information on the NMFS Pacific Islands Regional Office web site. The notice will announce that the fishery will be

reopened beginning at a specified date, which is not earlier than 7 days and not later than 15 days, after the date of filing the closure notice for public inspection at the Office of the Federal Register.

(f) *Marine mammal handling and release.* (1) Each year, both the owner and the operator of a vessel registered for use with a longline permit issued under § 665.801 of this title must attend and be certified for completion of a workshop conducted by NMFS on interaction mitigation techniques for sea turtles, seabirds, and marine mammals, as required under § 665.814 of this title.

(2) Longline vessel operators (captains) must supervise and be in visual and/or verbal contact with the crew during any handling or release of marine mammals.

(3) A NMFS-approved placard setting forth marine mammal handling and/or release procedures must be posted on the longline vessel in a conspicuous place that is regularly accessible and visible to the crew.

(4) A NMFS-approved placard instructing vessel crew to notify the captain in the event of a marine mammal interaction must be posted on the longline vessel in a conspicuous place that is regularly accessible and visible to the crew.

■ 5. Effective February 27, 2013, add a new paragraph (c) to § 229.37 to read as follows:

§ 229.37 False Killer Whale Take Reduction Plan.

* * * * *

(c) *Gear requirements.* (1) While deep-setting, the owner and operator of a vessel registered for use under a Hawaii longline limited access permit must use only hooks meeting the following specifications:

(i) Circle hook with hook shank containing round wire that can be measured with a caliper or other appropriate gauge, with a wire diameter not to exceed 4.5 mm (0.177 in); and

(ii) Offset not to exceed 10 degrees.

(2) While deep-setting, owners and operators of vessels registered for use under a valid Hawaii longline limited access permit must use leaders and branch lines that all have a diameter of 2.0 mm or larger if the leaders and branch lines are made of monofilament nylon. If any other material is used for a leader or branch line, that material must have a breaking strength of at least 400 lb (181 kg).

* * * * *

50 CFR CHAPTER VI

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 6. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 7. In § 665.806, effective December 31, 2012, revise paragraph (a)(2) to read as follows:

§ 665.806 Prohibited area management.

(a) * * *

(2) *Main Hawaiian Islands (MHI).* The MHI longline fishing prohibited area is the portion of the EEZ around Hawaii bounded by straight lines connecting the following coordinated in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

* * * * *

Dated: November 20, 2012.

Alan Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–28750 Filed 11–28–12; 8:45 am]

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